TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1910.

No. [redacted] 112.

JOAQUIN JOVER Y COSTAS, APPELLANT AND PLAINTIFF IN ERROR,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE CITY OF MANILA.

No. [redacted] 113.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE CITY OF MANILA, APPELLANTS AND PLAINTIFFS IN ERROR,

vs.

JOAQUIN JOVER Y COSTAS.

APPEALS FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED DECEMBER 12, 1906.

(21,439 and 21,440.)

(21,439 and 21,440.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 309.

JOAQUIN JOVER Y COSTAS, APPELLANT AND PLAINTIFF IN ERROR,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE CITY OF MANILA.

No. 310.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE CITY OF MANILA, APPELLANTS AND PLAINTIFFS IN ERROR,

vs.

JOAQUIN JOVER Y COSTAS.

APPEALS FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

	Original.	Print.
Proceedings in court of land registration	1	1
Petition for registration of title	1	1
List of documents accompanying petition	3	2
Plan	4	2
Technical description	5	3
Certificate of register of titles	7	3

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 21, 1909.

	Original.	Print.
Exhibit B—Certified copy of deed from Jose Camps to Francisco Hernandez y Fajarnes, and by the latter to Juan Jover y Serra	18	9
Motion to amend petition	43	23
Report of examiner	44	23
Order to correct technical description of plan	47	25
Amendment to description	48	26
Notice to Attorney General *et al.* to appear	49	26
Sheriff's return	51	27
Notice to Joaquin Jover y Costas	51	28
Certificate of publication of notice	52	28
Order of continuance	53	29
Notice of filing copy of grant and of motion to set day for continuance of hearing	54	29
Petitioner's Exhibit A—Certificate of secretary of the superior civil government, July 1, 1862	54	30
Testimony of Joaquin Salvador	58	32
Opposition of the city of Manila	59	33
Opposition of the insular government	61	34
Offers by the petitioner	62	34
Testimony of Eduardo Vidal	62	35
Arcadio Arellano	72	40
Felix Fanlo	84	46
Joaquin Salvador	88	48
Damaso Flores	95	52
Petitioner's Exhibit D—Rents from the Murallon property	97	53
E—Rents from the Murallon property	97	54
F—Rents from the Murallon property	98	54
Testimony of Enrique Rodriquez	98	54
Petitioner rests	104	58
Exhibit G—Certificate of secretary of superior civil government, July 1, 1862	105	58
Motion and order as to hearing	108	58
Defendant's Exhibit A—Letter of J. Salvador to Arsenio Cruz Herrera, July 3, 1902	109	60
List of documents enclosed	109	60
Testimony of S. O. Scudder	110	61
Arguments filed	114	63
Petitioner's Exhibit H—Power of attorney of Juan Soler y Cendra to Joaquin Salvador y Mirrallas and Bartolomé de Castro y Linares, April 9, 1897	114	63
Opinion by S. del Rosario, J	122	67
Exception of petitioner	129	71
Exception of insular government	130	71
Motion for new trial overruled	131	72
Notice of intention to appeal	131	72
Clerk's certificate	131	72
Record received in supreme court	132	72
Brief filed and case argued and submitted	132	73
Opinion by Carson, J	133	73
Dissenting opinion by Johnson, J	133	73
Dissenting opinion by Tracy, J	184	99

	Original.	Print.
Exceptions by petitioner	186	99
Petition for rehearing denied	186	99
Exception by insular government	186	99
Judgment	186	99
Exception by petitioner	187	99
Petitioner's prayer for appeal	188	99
Petitioner's assignment of errors	189	101
Petitioner's motion for separate findings of fact and conclusions of law	192	103
Order that court adopts conclusions of trial court	193	103
Order allowing petitioner's appeal and fixing bond	194	104
Citation to Attorney General on petitioner's appeal	195	104
Petitioner's prayer for writ of error	196	105
Petitioner's assignment of errors	198	106
Petitioner's motion for separate findings of fact and conclusions of law	201	107
Order that court adopts conclusions of trial court	202	108
Writ of error allowed petitioner	203	108
Citation to Attorney General on petitioner's writ of error	205	109
Stipulation as to transcript on appeals and writs of error	206	110
Attorney General's prayer for writ of error	207	110
Attorney General's assignment of errors	208	111
Order allowing writ of error asked by Attorney General	210	112
Writ of error sued out by government of Philippines and city of Manila	211	112
Citation on writ of error sued out by government of Philippines	213	113
Petition of Attorney General for appeal	214	114
Assignment of errors on appeal of Attorney General	215	115
Order allowing petition of Attorney General for appeal	217	116
Writ of error sued out by Attorney General	219	116
Citation on appeal of Attorney General	221	117
Petition to extend time to file transcript	222	118
Order enlarging time to file transcript	223	118
Bond of petitioner on writ of error	224	119
Bond of petitioner on appeal	226	120
Clerk's certificate	228	121

1 THE UNITED STATES OF AMERICA,
Philippine Islands:

R. G. No. 2674.

In the Matter of the Petition of JOAQUIN JOVER Y COSTAS, Plaintiff in Error,
vs.
THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS and THE CITY OF MANILA, Defendants in Error.

Be it remembered That the following proceedings were had in the Court of Land Registration and in the Supreme Court of the Philippine Islands, to-wit:

On the tenth day of December, 1903, Joaquin Salvador, as attorney in fact for Joaquin y Costas, filed a petition in the Court of Land Registration of the Philippine Islands for the registration of a tract of land in the City of Manila, which said petition is in the words and figures following, to-wit:

Petition for Registration of Title.

THE UNITED STATES OF AMERICA,
Philippine Islands:

To the Honorable Judge of the Court of Land Registration:

Joaquin Jover y Costas, by his attorney petitions this Court that in accordance with the Land Registration Act the following
2 described property, of which he is the absolute owner, be registered:

(1) A piece of land situated on the Malecon del Norte of the river Pasig, near the lighthouse, in the District of San Nicolas of the City of Manila, Philippine Islands, with the two warehouses marked A. and B. on the attached plan, excluding the other buildings appearing thereon.

It is bounded in front by the Pasig river, on the right by the canal or estuary of Vitas, on the left by lands and buildings belonging to the Bureau of Coast Guard and Transportation of the Insular Government, and in back by Manila Bay. Said property is more particularly described in the technical description hereto attached, and which is made a part hereof. It has a superficial area of 63,342.7025 square meters, as shown on the attached plan.

(2) The above described property was last assessed at $247,578. *dollars*, United States currency, and the buildings at $8,000. *dollars*, United States currency.

(3) To the best of my knowledge and belief no lien exists upon the same, and there is no other person claiming a right thereto.

(4) Don Joaquin Jover y Costas acquired part of the said property by inheritance from his father, Juan Jover y Serra, and part as his share in the partition of the estate of Miguel Jover y Costas, deceased.

(5) The aforesaid property is now occupied by Messrs. Carmen & Company, number four Barraca, Binondo; Jose Lim, 169 Muelle de la Reina, San Nicolas; Messrs. Smith, Bell, 31 Murallon, San Nicolas; Messrs. Marcaida & Co., 43 Morzagaray, Binondo; Francisco Reyes, 21 Plaza Moraga, Binondo; Compañia, Maritima,
3 319 Muelle del Rey, Binondo, and 37 Murallon, San Nicolas; the Chinaman O-Tiongsing, 57 Barraca, Binondo; Castle Brothers, Wolf & Sons, 83 Murallon, San Nicolas, and 18-24 Plaza Moraga, Binondo; Messrs. Gutierrez Brothers, 116-122 Beaterio, Intramuros.

(6) The names and addresses of the owners of the adjoining property are to my knowledge, The Insular Government.

(7) That Joaquin Jover y Costas is married, although his wife's name is at present unknown to his attorney in fact, who has written to Barcelona, Spain for the necessary information, and who promises to submit it to the Court when it is received.

(8) My full name, age, residence and address are as follows: Joaquin Jover y Costas, Barcelona, Spain; my attorney's address is Joquin Salvador, 112 Estolta, Binondo, Manila.

Manila, P. I., December 10th, 1903.

(Signed) JOAQUIN JOVER Y COSTAS,
By J. SALVADOR.

List of Accompanying Documents.

A power of attorney to Joaquin Salvador y Mirallas, executed in Manila April 9th, 1897; plan and technical description of the property; certificate issued by the Register of Titles of the City of Manila as to the entries and marginal notes relating to the said property, dated August 5th, 1903; certified copy issued by the Chief of Division of Archives August 14th, 1903, of the deed of sale of the said property executed by Jose Cams in favor of Francisco Hernandez y Fajarnes, and another deed executed by the latter to Juan Jover y Serra.

UNITED STATES OF AMERICA,
Philippine Islands:

CITY OF MANILA, *December*, 1903.

I hereby certify that Joaquin Salvador, whose name is sub-
4 scribed above as attorney in fact for Joaquin Jover y Costas, known to me to be the person who signed the foregoing petition, personally appeared before me and stated under oath that the same is true to the best of his knowledge and information, he having exhibited to me his registration tax certificate number A162531, issued in Manila, June 19th, 1903.

(Signed) JOSE MORENO LACALLE,
[COURT SEAL.] *Assistant Clerk of the Court of Land Registration of the Philippine Islands, ex-Officio Notary Public.*

(Plan.)

(Here follows map marked p. 4*a*.)

MAPS

TOO

LARGE

FOR

FILMING

5 Technical Description.

The undersigned, residing at 82 Concepción, Quiapo, Manila, having been requested by Joaquin Soler, a merchant of this City, No. — Escolta, Binondo, Manila, as the legal administrator of Joaquin Jover y Costas, a resident merchant of the City of Barcelona, Spain, to make a survey, measurement and description of the piece of land on the northern bank of the Pasig river, near the lighthouse, within the municipal district of San Nicolas of the City of Manila, P. I., proceeded to make such survey on the twelfth instant, the description being as follows:

Commencing at a point on the east side of the dry-dock, 13.90 m. from the embankment of the river Pasig 33.00 S. E. to a point marked "A"; thence run S. 89° 36′ E., 336.81 m. to a point marked "B", ("A" and "B" constituting the front of the lot) said point "B" being 10.90 m. and 20.33 m. from center of Vitas bridge; thence N. 1° 10′, 27.30 m. to a point marked "C"; thence N. 2° 7′, 24.60 to a point marked "D"; thence N. 5° 24′, 138.85 m. to a point marked "E"; thence N. 89° 35′ 327.50 meters to a point marked "F"; thence S. 1° 33′ E., 190 m. to point of beginning marked "A".

It is bounded in front by the river Pasig, the landing place known as the Malecon del Norte intervening, on the right by the canal of Vitas, on the left by land and buildings belonging to the Bureau of Coast Guard and Transportation of the Insular Government and in back by the Manila Bay. It contains 63,342.7025 square meters.

The buildings standing on the above described lot consist of two warehouses of strong materials, wooden structure and tile roofs.

There should also be considered as improvements on the land
6 a stone breakwater built in the year 1896 on the right and partly on the back sides of the lot, 106 meters in length, which said breakwater may serve as the foundation of the docks which the owner of the property intends to build.

The area covered by the two warehouses above-mentioned is 455.-9594 square meters and 417.1776 square meters, respectively, their correct measurements being shown on the plan.

The other buildings shown on the plan belong to the occupants thereof, all of whom are merchants of this City. The foregoing survey was made by means of an improved French pantometer, a German steel tape and a French metal transit.

Manila, December 3rd, 1903.

(Signed) ARCADIO ARELLANO,
Architect.

7 To the Register of Titles of the City of Manila:

Joaquin Salvador y Mirallas, of age, and a resident of this City, as attorney in fact by substitution of Joaquin Jover y Costas, states: that his said grantor is the owner of the large tract of land and the buildings thereon, situated on the so-called Malecon del Norte, District of Binondo, bounded in front by the said Malecon and the River Pasig, on the right by the bridge and estuary of Vitas, on the left by the lighthouse and Manila Bay, and in back by the said Bay, and desiring to obtain a literal certified copy of all the entries

and marginal notes on record relative to the said property, hereby requests that he be furnished with same, in the manner indicated.

Manila, August 4th, 1903.

(Signed) J. SALVADOR.

I, Alberto Barretto y Blanco, Register of Titles of the City of Manila, do hereby certify that, Joaquin Salvador y Miralles, of age and a resident of this City, as attorney in fact for Joaquin Jover y Costas, having requested that a literal certified copy of all the entries and marginal notes on record relating to the property mentioned in his petition be issued to him, I examined the corresponding books, from which the following appears:

On page 23, volume 15 of the Binondo section, and 52 of the Archives, there appears the following entry:

"Property No. 793.—Inscription One. I certify that at page 92 of the provisional book numbered 5 of the Binondo section of this City, inscription number one appears as follows: 'Property number 756. Urban. Number not stated. It consists of a large tract of land upon which there are two contiguous warehouses of strong materials and tile roofs, being 24 and one half yards deep by 24 long, situated on the so-called Malecon del Norte District of
8 Binondo of this city, and within the jurisdiction of this Registry of Titles for the Northern District. It is bounded on the south by the said Malecon and the river Pasig; on the east by the bridge and estuary of Vitas; on the west by the lighthouse and Manila Bay, and on the north by the said Bay. The lot is four hundred yards long by two hundred deep, nothing being said about its superficial area. It appears that a strip of the said land 248 yards long by 55 wide, and another strip 128 yards long by 50 wide, which it is said make a total of 20,040 square yards have been filled to the height of the Malecon. It appears that all of the said land and the house of strong materials which then existed thereon was bought for the sum of 32,000 dollars, local currency. It appears from the title deeds submitted to this Office that there is a lien upon the said land of 7,777 dollars and 86 cents, local currency, in favor of the Junta Administradora de Obras Pias, although nothing is said about the instrument evidencing such lien, and there is nothing which would facilitate the search for such document in the books of the old Registry, and an examination of the petition presented to this Office requesting the transfer of the entries in the Old Registry relating to real rights fails to disclose that any request was ever made to have the entry relating to the said lien transferred. The history of the acquisition of this property is as follows: Prior to the promulgation of the Mortgage Law in these Islands, the brothers, José, Horacio, Aurora, Maria Dolores, and the deceased, Josefa, all surnamed Camps, the latter being represented by her surviving minor daughter, Aurelia Roman, were declared to be the legitimate heirs of their deceased father, Jose Camps, according to an order quoted in full in the deed in question,
9 entered by the Court on the 20th of September, 1870, the Hon. Luis Pita, Judge of the Court of First Instance of the

District of Intramuros of this City, presiding, before the actuary, Severino Saracho, Don José Camps y Montilla, having been appointed in the same proceeding guardian *ad litem* of the said minor, Aurelia Romana, and further considered as the legal representative of his brothers and sisters, Horacio, Aurora and María Dolores. The deceased, José Camps, was the owner of the land in question, as stated in this instrument, under a grant to him from the Government of these Islands. He was also the owner of the house built upon the said land, at his own expense, and which said house no longer exists. Therefore, upon his death the said property, including the land and the house, passed undivided to his aforesaid children under and by virtue of the order of the Court wherein they were declared to be the legitimate heirs of their deceased father. Don José Camps, Jr., having been authorized by his brother and sisters, Horacio, Aurora and María Dolores, in the power of attorney quoted in this deed to dispose of their shares in the property, and the said José Camps, Jr., having obtained the necessary judicial authority to dispose of the share belonging to his ward, Aurelia Roman, the heir of the deceased, Josefa, as shown in the said instrument, the court issued an order authorizing the sale of the property at public auction, which said sale took place in the court room of the Court of First Instance of the District of Intramuros August 17th, 1877, two bidders only participating, and the property was sold to the bidder, Manuel Alvarez, who offered in the name of Francisco Hernandez y Fajarnes the sum of thirty-two thousand dollars, local currency, as shown by the proceedings concerning the said sale, wherein mention is made of the lien existing upon the said property and referred to in this entry. The said Mr. Hernadez y Fajarnes ratified his offer and prayed the court that he be considered as the purchaser of the property, whereupon the Court, on the fourth day of September of the said year made an order approving the sale in favor of the petitioner, directing that upon the payment of the purchase price the necessary deed be executed. The said Jose Camps, Jr., of age and a resident of this City, for himself and in behalf of those whom he represented, claiming that the property was free of any lien, transferred and conveyed the same to Francisco Hernandez y Fajarnes, married, of age, and a resident of this City, for the sum of thirty-two thousand dollars, local currency, the receipt of which he acknowledged in the presence of the Clerk, who certifies thereto. The said purchaser, Francisco Hernandez y Fajarnes, upon accepting the terms of the sale, conveyed the property above described to Juan Jover y Serra, of age, married, and a merchant of the City of the City of Barcelona, represented by Eduardo Vidal, of age, single, and a merchant and resident of this City, for the aforesaid sum of thirty-two thousand dollars, local currency, the receipt of which he acknowledged. Juan Jover y Serra died February 22, 1879, at nine P. M., in the city of Barcelona, according to the certificate of burial issued on the following day by the municipal court of the District of San Beltran. Having left no will, his widow Maria Rosa Costas y Llucia, in her capacity as the legal administratrix of the property of her children

Joaquin and Miguel Jover y Costas, presented a petition to the Court of First Instance of San Pedro de Barcelona requesting that her said children be declared the heirs abintestate of their father Don Juan, which said petition was, after the usual formalities, granted by the Court on the seventh of March of the same year, 1879,
11 and the said Joaquin and Miguel Jover y Costas were thus declared the heirs *ab intestate,* sharing equally, of the deceased, Juan Jover y Serra. Subsequently the said Miguel Jover y Costas died without a will on the 29th of April, 1888, leaving as his only relatives his mother and his brother, that is to say, Maria Rosa Costas y Llucia, who by an order entered in the said proceedings May 29th, 1888, by Antonio Martin Soua, Judge of the Court of First Instance of the City of Barcelona, before the actuary, Jose Gili, were declared to be the heirs *ab intestate* of the said Miguel Jover y Costas, deceased. The said widow, Maria Rosa Costas y Llucia and Joaquin Jover y Costas, married and a merchant, both being of age and residents of the city of Barcelona, by an instrument executed in that City August 22nd, 1888, before the notary public, Manuel de la Ratea y Catalan, proceeded by common consent to make an inventory, appraisal and liquidation and partition of the estate of the deceased Don Miguel under which there was inventoried under number 16 one undivided half of the property in question and one undivided half of the house which then stood upon the land, all of which belonged to the deceased who had inherited the same from his father, which said one-half was assigned to the said Joaquin Jover y Costas at a value of 7,500 pesetas, on account of his share in the estate. Subsequently the said mother and son executed another instrument as an amplification of the first, wherein it is stated that Don Joaquin and his deceased brother Miguel built, according to proceedings for the perpetuation of testimony instituted in the Court of First Instance of Binondo, which was approved by the Court November 17th, 1888, the said proceedings having been duly recorded in the protocol December 6th, following, two warehouses upon the said land at their own expense, which said warehouses they agreed belonged to them share and share alike, the share belonging to Don Miguel having passed to
12 Don Joaquin by virtue of the order of the Court declaring him an heir, and by virtue of the aforesaid instrument of partition, this assignment and arrangement being ratified by the mother, and by her extended to whatever interests she might have in the warehouses in question. In another public instrument subsequently executed by the said mother and son they ratified the description of the said warehouses, part of which description appears at the beginning of this entry. Finally, and for the purpose of showing more definitely the existence of the said warehouses Don Joaquin Jover y Costas, by his attorney, Juan Soler y Senra, secured the permit which the City of Manila had given for the construction of the said warehouses and also a certificate of the survey of the same by the municipal architect of said City. Wherefore and it appearing from the documents referred to that Don Joaquin Jover y Costas is the owner of all of the said property, I hereby register

the same as his own, he having acquired it by inheritance and as a part of his share in the estate. All of the foregoing appears from the deed of sale executed in this City September 5th, 1877, before the then notary public Numeriano Adriano, who at the request of José Camps issued a first copy of the said instrument on the 11th of the same month; from the petitions above referred to; from the certified copy of the death certificate of Juan Jover y Serra issued June 3rd, 1879 by Jose Victor Brugada, municipal judge for the district of San Beltram; from the certified copy of the proceedings relating to the declaration of heir in favor of the deceased children issued March 12th, 1879, by Manuel Trujillo, the actuary of the Court of First Instance of the District of San Pedro de Bar-
13 celona; from the certified copy of the order of the Court declaring the mother and brother of the deceased, Miguel Jover, Maria Rosa Costas and Joaquin Jover y Costas, respectively, to be his, the said Miguel Jover, legitimate heirs, issued in Barcelona April 8th, 1885, by Manuel Desaratea y Catalan, a notary public in and for the said City; from a certified copy of part of the instrument of partition issued April 10th, 1891, by the said notary, Saratea y Catalan; from the deed of amplification executed July 20th, 1889 before the said notary public; from the additional instrument describing the property executed April 10th, 1891, before the said Notary, Manuel de Laratea; from the permit for the construction of the Warehouses, a certified copy of which was issued February 6th, last, by Bernardino Marzano, Secretary of the Municipal Board; and from the certificate of the survey of the property issued on the 13th of the said month and year by Abelardo Lafuente an assistant in the Department of Construction of the said City, all of which documents were presented in this Office yesterday at eight o'clock A. M. as per entry number 1,076, page 235, volume 5 of the Diary; the certificate of burial having been filed under number 14 in the record of public documents for the present year. The foregoing being in conformity with the documents to which reference has been made, I sign these presents in Manila, this 16th day of July, 1896. —Gonzalo Cespides.—Fees $25. Section 7."—The foregoing is a true copy of the inscription number one copied at page 92 of provisional book number four of the Binondo section, and in witness thereof I sign these presents in Manila, this 28th day of November, 1897.—Mateo Camps."

14 "At page 26 of the same volume, section and archive, the following inscription appears:

"Property number 793.—Second Inscription.—Urban. Consisting at present of a large tract of land upon — stand two warehouses, adjoining each other, constructed of strong materials, with tile roofs, bearing no numbers, as appears from the preceding inscription wherein the same is described. The said property is situated in the so-called Malecon del Norte of the District of Binondo of this City and within the jurisdiction of the Northern District of this Registry, whereupon stand two additional buildings, the first consisting of two structures of strong materials, with tile roofs, covering a superficial area of 400 square meters, and the second is a warehouse with

galvanized iron roof and stone supports, having a frontage of nine meters and seventy centimeters and a depth of twenty-four meters and thirty centimeters. The value of the two warehouses forming a single building is 8,000 dollars, local currency and that of the other building, 3,500 dollars, local currency, making a total of 11,500 dollars, local currency. According to the previous inscription, the title deeds submitted showed a lien upon the land of 7,777.86 dollars, local currency, in favor of the Junta Administradora de Obras Pias, no mention, however, being made of the public instrument evidencing the said lien. It appears from the said inscription that Joaquin Jover y Costas acquired the land and the first two warehouses above mentioned by inheritance from his father Don Juan, as his share in the estate, and in a petition presented to this office by Joaquin Salvador y Miralle, of age and a resi-
15 dent of this City in behalf of the said Joaquin Jover y Costas, as shown by the power of attorney exhibited by him, it is stated that, with the permission of the old municipal board of this City first obtained March 9th, 1895, by Juan Soler, as attorney in fact for the said Joaquin Jover y Costas, there were built at the latter's expense two warehouses forming one single building, from the front apparently being of two stories but from the back only one, covering a superficial area of four hundred square meters, which said warehouses were built in conformity with the permit issued by the municipal board, and in accordance with the plans approved by the said board, the building having been completed in the latter part of August, 1895, according to a certificate issued August 30th, by Abelardo Lafuente y Almeda, municipal architect of this City. It is also stated in the petition that the said Joaquin Salvador y Millares, as attorney in fact for the said Joaquin Jover y Costas, constructed upon the said land another warehouse in the year 1885 with funds belonging to the said Joaquin Jover y Costas, which said warehouse is more particularly described at the beginning of this entry. Wherefore, I hereby register the title to the two warehouses in question in favor of Joaquin Jover y Costas, in addition to his title to the land upon which the same stands, already registered. All of the foregoing appears from the petition presented and from the aforesaid instrument of substitution of power executed in this City on April 9th, 1897, by Juan Solar y Cendra to Joaquin Salvador y Millares before the Notary Public of this City, Enrique Barrera y Caldes, wherein the said Soler y Cendra substituted the power conferred upon him by the said Jover y Costas in the power of
16 attorney executed in the City of Barcelona on the 21st day of May, 1895, before the notary public of the said City, Jose Ferrer y Bernadas, which said documents were presented in this Office at nine o'clock this morning, as per entry number 236, page 72, volume 7th of the Diary, the said petition having been filed under number eight with other similar petitions. The foregoing being in conformity with the documents to which I refer, I sign these presents in Manila, this thirtieth day of October, 1899.—Simplicio del Rosario. Fees $12.50. Section 7 of the Tariff."

On the margin of the first entry the following note appears:

"The mortgage upon this property referred to in the attached inscription and in the following description, number two, has already been canceled according to the marginal note on pages 125. 13 and 32 of the books of the old registry of the mortgages of this City, wherein were recorded the deed and acknowledgment of the said mortgage which at first amounted to 9,000 dollars local currency, for the years 1859, 1860, and 1873, respectively, the said entries having been made September 6, 1877, by the Register Bernardino Mazarno, as appears from the said books and deeds executed October 13th, 1859, and January 28th, 1860, respectively, before the former Clerk of this City, Eduardo Olgado, by Jose Camps and sons, whose names do not appear, the said Jose Camps being the original owner of the land, and the instrument of February 7th, 1873, executed before the notary, Francisco Rogent by Jose Camps Jr., in his own behalf, in behalf of his ward, Amalia Romana, and as attorney in fact of his brother and sisters Horacio, Aurora, and Dolores Camps, the children of the deceased, Jose Camps, together with the certificate issued on the 19th of the last month by Jose de la Rosa the secretary of the Junta Administrativa of Obras
17 Pias of this City, *viced* by Mr. Trunion, Chairman of the said Junta, in whose favor the mortgage of 9,000 dollars was created, in which said certificate it was stated that the mortgage had been canceled, according to the books of the said Board, accompanied by a petition dated the 25th of the said month subscribed by Joaquin Salvador y Millares as attorney in fact of the present owner of the property Joaquin Jover y Costas, requesting that the present marginal note be made concerning the cancelation of the said mortgage, were presented in this registry today at 11 o'clock A. M. as per entry number 481, page 144, volume 7 of the Diary; the said petition having been filed under number 8 with other petitions of similar nature presented this year. The foregoing being in conformity with the documents referred to, I sign these presents in Manila, this 27th day of February, 1900. S. del Rosario.—Fees $3.75. Section 5. Manila, March 3, 1900.—S. del Rosario."—On the margin of the second inscription the following note appears: "The aforesaid mortgage has already been canceled according to a note on the margin of the preceding inscription. Manila, February 27, 1900.—S. del Rosario."

The foregoing entries and marginal notes are in conformity with the originals thereof to which I refer, and in witness thereof I issue these presents in Manila, this fifth day of August, 1903. (Signed) Alberto Baretto. (Seal) Fees $15.50, Sections 9 and 10 of the Tariff.

18 EXHIBIT "B."

Department of Public Instruction, Bureau of Archives.

There is a seal as follows: "Alfonso XII Rey de España, Filipinas 1876 y 1877.—Sello 3°. A^s. 1876 y 77. 1 peseta 25 cent^s.—N. O. 289.025.—" Conveyance of a piece of land and house stand-

ing thereon for the sum of 32,000 pesetas made by Jose Camps in his capacity as heir of the deceased Jose Camps, as guardian *ad litem* Amelia Roman and as attorney in fact for the other heirs, in favor of Francisco Hernandez y Fajarnes, and by the latter to Juan Jover y Serra.—No. 270. In the City of Manila, this fifth day of September, 1877, before me, the undersigned Clerk of the Court of First Instance of this City, in the presence of the witnesses hereinafter mentioned, personally appeared Jose Camps, of age and a resident of this City, known to me to be such, to which I certify, in his capacity as the son and heir of Jose Camps, deceased, and in his further capacity as guardian *ad litem* of the minor Amelia Roman, also an heir of the said Jose Camps, in representation of her mother, Josefa Camps, and as attorney in fact for the other heirs interested in the estate of the said Jose Camps, deceased, named Horacio, Aurora, and Maria Dolores, all the children of Jose Camps, his capacity as such being evidenced by a certified copy of the order declaring them heirs *ab intestate* of the said Jose Camps, deceased, and the power of attorney exhibited by him, which said order and power of attorney are as follows: In the Court of First Instance of the District of Intramuros, this 20th day of September, 1870.—Upon consideration of the record and proceedings in this case, and
19 it appearing from the testimony of the witnesses at pages 23 to 25, from the report of the Clerk at pages 28 and 29, and from the certificate of death, showing that Don Jose Camps died without a will, and considering that the certificates at pages 4 to 10, and 26, show that Jose, Horacio, Aurora, Maria Dolores, and the deceased Josefa, now represented by her minor child, Amelia Romana, are the legitimate heirs of the deceased father, the said Jose Camps, and upon consideration of other evidence of record and the reports of the prosecuting attorney, the Court, before me, the Clerk, said that he should hold, and therefore held, that Jose Camps had died without a will and that Jose Camps, Jr., Horacio, Aurora, Maria Dolores, and the deceased, Josefa, represented by her minor child, Amelia Roman, were his legitimate heirs, without prejudice to any other heir with equal or better rights; and it appearing that the petitioner, Jose Camps y Montilla, has given bond, let him be appointed guardian of the said minor Amelia Roman upon his taking the prescribed oath; it is also ordered that he be considered as the legitimate representative of his brother Horacio, and his sisters Aurora and Maria Dolores, as requested by him, he to render to this Court, within 15 days, an accounting of all the property of the estate in question. So ordered and adjudged by the Court, to which I certify.—Luis Pita.—Severino Saracho.—Leandro Casamor y Huguet, Governor of the District of Antique, acting in the absence of the Clerk.

I certify that in Book 2 of Instruments executed in this Office there is a power of attorney recorded at pages 196 to 197 of the following tenor.

20 In San Jose de Buenavista, this 19th day of August, 1868, before me, the Governor of this Province, acting with the assistance of witnesses in the absence of the public notary, and in

the presence of the other witnesses hereinafter mentioned, personally appeared Dolores Camps de Martinez, accompanied by her husband, Juan Jacobo Martinez, residents of this City, and stated that she hereby conferred as ample and sufficient power as may be requisite and necessary in law upon Jose Camps y Montilla to, in her behalf, and in her name, accept, under benefit of inventory, her share in the estate left by her deceased father Jose Camps, and for this purpose to take such legal steps as may be necessary for a proper liquidation of the said estate, presenting such motions, petitions, protests and complaints as he may deem proper, to introduce witnesses and such evidence as may be required; to accept service of petitions, interlocutory orders, or other process, abiding by those which may be favorable and appealing from those which may be unfavorable, prosecuting the proper remedies to a final determination; to secure such orders, writs and process as may be necessary, to serve the same, or obtain certified copies thereof; to challenge and impeach judges, clerks, and any officials of the administration of Justice, to swear to such challenges, or to withdraw the same whenever he may deem it proper; and finally, to take such steps, judicially or otherwise as may be convenient for such purpose; conferring and granting upon her said attorney the most ample and general power required by law, without any limitation whatever, with full power of substitution, and the same at his pleasure to revoke, relieving him from any liability for costs, pledging therefor all her
21 property and income; after which she signed these presents with the consent of her husband, who also signed, both being personally known to me, in the presence of the witnesses Cipriano Iglesias and Saturnino de la Natividad, residents of this City, to all of which we certify.—Leandro Casamor.—Dolores Camps de Martinez.—Juan J. de Martinez.—Cipriano Iglesias.—Saturnino de la Natividad.—Prudencio Villaret Maximiniano. Ciriaco Garrion.

The foregoing power of attorney was executed in my presence and in the presence of my witnesses. And at the request of the interested party, this copy is issued on a sheet of paper in San Jose de Buenavista this 19th day of August, 1868, to which we certify.—Leandro Casamor.—Prudencio V. Maximiniano. Ciriaco Garrion.—I, Florencio Saens de Vizmanos, interpreter of languages of the Supreme Civil Government of the Philippine Islands, do hereby certify that on this day there was presented to me a power of attorney in the English language which, translated into Spanish, reads as follows:—Literal contents.—Know ye by these presents that I, Horacio Camps, of the City and County and State of New York do hereby give and confer upon José Camps of Manila, Philippine Islands, full power to, in my name and stead, buy and arrange for the purchase of land, real estate, or any tenements whatsoever in the Philippine Islands, in such place as he may deem proper; to sell, mortgage or lease the whole or part of the said real estate and any interest which I have or may hereafter have in such real estate in the Philippine Islands under the conditions and in the manner which he may deem convenient, authorizing him to ex-

change and divide any land which now or hereafter may be-
22 long to me; to do such acts and take such steps as he may deem convenient, and for this purpose I authorize him to execute any and all instruments which he may deem necessary for this purpose; and finally I grant unto my said attorney, Jose Camps, full and complete power, ratifying and confirming whatever he may do under the terms hereof, as I, myself, would do if I could be and were present, including the power of revocation and substitution. In testimony whereof, I sign these presents, this 12th day of October, 1868.—Horatio Camps—L. S.—In the presence of J. Ruthmaner, State of New York, City and County of New York.—On this 12th day of October, 1868, before me Abraham B. W. Wanvechten, notary public for the state of New York, duly appointed and sworn as such, and a resident of the City of New York, personally appeared one, Horacio Camps, known to me to be the person referred to in the foregoing power of attorney, and acknowledged that he executed and signed the same in the presence of the witness J. Ruthmaner, who being first duly sworn, stated that he was a resident of the City of New York, and was personally acquainted with the said Camps. In witness whereof, I sign and seal these presents on the date above set forth. A. B. W. Vanvechten, Notary Public for the City and Count- of New York, L. S.—I, Carlos E. Loen, a Notary in and for the City and County of New York, and for the Supreme Court thereof, hereby certifies that A. V. W. Vanvechten, before whom the foregoing instrument is acknowledged, was at the time of so doing, a notary public in and for the City
of New York, duly sworn and qualified to act as such; that
23 I am acquainted with his handwriting and verily believe that his signature thereto is genuine.—In testimony whereof I have hereunto set my hand and affixed my official seal the seventh day of May, 1869.—Chas. E. Leon, Notary. L. S.

Then follows a certificate of the Spanish Consul in New York as to the genuineness of the signature of A. B. W. Vanvechten.—L. S.—The foregoing is a true translation of its original to which I certify in Manila, this 28th day of August, 1869.—Florencio Saens de Vismano.—There is a seal on the margin as follows: "Interpretation of languages, Manila." Fees and paper *gratis*.—I, Mateo Barroso y Bonson, Professor of the Academy of Jurisprudence and Legislation of Madrid, a member of the Bar of said City, and Secretary of the Supreme Court of Manila, do hereby certify that upon a petition presented by the Solicitor, Mateo de San Buenventura, asking that the power of attorney thereto attached be declared to be sufficient and in due form, the following order was made by the Court.—Supreme Court of Manila. October 9th, 1869, the Members of the Court whose names appear on the margin, after examining the power of attorney executed by Horacio Camps in favor of Jose Camps, and in conformity with the opinion of the Attorney-General, and without prejudice held, that the said power of attorney was sufficient for the purpose therein mentioned, directing, however, that the attorney appointed therein substitute a qualified person in his place, should he be a soldier or public official, this fact not appearing; a

certified copy of the translation of the said power should be filed with the papers in this case, and it is ordered that the original thereof be returned to the Solicitor who presented the same, with a certified copy of this decree. So ordered and decreed, to which I certify.—
Ostolaza.—Valdenedro.—Elio.—Tovar.—Toro y Bonilla.—
24 Mateo Barroso.—In compliance with the foregoing, I issue these presents in Manila, this 14th day of October, 1869.—Mateo Barroso.

No. 721. In the City of Manila this 21st day of December, 1869, before me the undersigned notary public, and the witnesses hereinafter mentioned, personally appeared Aurora Camps, the wife of Alfredo Camps, who was also present, both being of age and residents of this City, and after being asked by me whether she desired the necessary license from her husband, and the husband being asked whether he granted such license, the former by virtue of the authority given her by her said husband, to which I certify, said: That she hereby granted as ample and sufficient power as may be required by law to Jose Camps Montilla, of this City, to represent her in all matters concerning the estate of her deceased father, Jose Camps, authorizing him to exercise and defend all the rights which she may have as such daughter and heir, to institute the preparation of inventories and take such other steps as he may deem convenient; to claim and receive her share in her deceased father's estate; to attend the partition of the same, approving or rejecting such partition, as he may see fit, applying for the sale of so much thereof as may be necessary to carry out the said partition, collecting and receiving such credits of the estate as may be due to her, compromising and compounding all questions and differences which may arise in each case if he deems it advantageous, and for this purpose to execute and sign all necessary instruments and documents, to file petitions and motions in the proper Court, to institute the necessary testamentary proceedings and all other incidental proceedings which may be necessary, presenting such claims as he may see fit in the exer-
25 cise of her rights, prosecuting such actions and proceedings to a final determination, or such other remedies as may be proper, and finally to do such acts and take such steps as his said grantor would do and take herself if she were present, either in or out of Court, relating to and for the purpose hereinbefore mentioned, giving and granting unto her said attorney full and complete power without any restriction, authorizing him to substitute the same in whole or in part, this at his pleasure to revoke; and for the faithful performance of which the grantor hereof pledges all of her property, promising to ratify and confirm whatever her said attorney may do under this power, including such special and necessary authority as may be requisite to represent her. So said and signed with her husband, personally known to me, Agiton Evangelista, Pedro Sangalongos and Apolonio Magtoto, residents of this City, who were present, having been witnesses hereto.—Aurora Camps de Camps—Alferdo Camps. Before me: Francisco Rogent.

The foregoing is a copy of the original on file at pages 1,423 to 1,425 of my protocol, to which I refer, and at the request of the

grantor of the said power, I issue these presents under my hand and seal of office in Manila, this 21st day of December, 1869.—Francisco Rogent.—No. 413.—In the City of Manila, this 20th day of June, 1872, before me the undersigned Notary Public and the witnesses hereinafter mentioned, personally appeared Aurora Camps, the wife of Alfredo Camps, who was also present, both being of age and residents of this City, and after inquiring from the former if she desired to obtain the necessary license from her husband, and of the
26 latter whether he granted the same, Aurora Camps, by virtue of the authority thus granted by her said husband, to which I certify, said: That she hereby gives and grants as full and complete power as may be necessary in law to Jose Camps a resident of this City to, in her name and in her behalf, buy and make arrangements for the purchase of lands, real estate, or any tenements in these Islands, wherever he may deem advantageous, for the price and under the terms and conditions which he may see fit to stipulate: to sell, mortgage or lease, in whole or in part, such real estate belonging to her, as well as the interest which she now has or may hereafter acquire in any and all property belonging to her in these Islands, in the manner most advantageous to her interests, authorizing him to exchange and divide the lands which now or may hereafter belong to her to collect and receive the proceeds of the sales and leases, and any other sums which are or may be due to her, executing such receipts and discharges as may be necessary; to execute such instruments as may be required under the terms of this power, which said instruments he will so execute in the manner required by their natures; to sue and appear in Court, instituting such actions as may be necessary, prosecuting the same to a final determination, and for this purpose to file such petitions and documents as may be necessary, appealing and prosecuting such other remedies as may be proper; to substitute this power in whole or in part, with power of revocation; and to do all other acts and take such other steps as she, herself, would do and take if she were present, under this power; giving and granting unto her said attorney full and complete power, without any limitations, promising to ratify and confirm all that her said attorney may do by virtue of this power and pledging all her present and future property, granting
27 to her said attorney such other especial and necessary authority as may be required for the execution of this power. So said and signed, with her husband, personally known to me, in the presence of the witnesses Agaton Evangelista, Pedro Sagalongos and Diego Recto, residents of this City, to which I certify.—Alfredo Camps.—Aurora Camps.—Before me: Francisco Rogent.—The foregoing is a copy of the original recorded at pages 974 to 976 of my public protocol for this year, and at the request of the said Aurora Camps I issue these presents in Manila, this 20th day of June, 1872.—Francisco Rogent.

No. 223. In the City of Madrid, this fifth day of April, 1872, before me, Mariano Garcia Sancha, Doctor of Juris-prudence, and notary public in and for this City, and in the presence of the witnesses hereinafter mentioned, personally appeared Dolores Camps

y Montillo, of age, who stated that she was 25 years old and married, accompanied by her husband Juan Martinez Alcobendas, 37 years of age, a captain in the Army, both being residents of this City and personally known to me, residing at number 44 Serrano street, and who exhibited to me their registration tax certificates numbered 272 and *and* 58,794, respectively, who, after securing the permission required by law, and assuring me that she is in the full enjoyment of her civil rights, having the necessary legal capacity to execute this instrument, freely and of her own will stated, that she hereby gives and confers such full and complete power as may be necessary upon Jose Camps, of Manila, Philippine Islands, to in her name and stead buy and exchange for the price, and under the conditions, most advantageous to her, property in the Philippine Islands, disposing in whole or in part of such property as be-
28 longs to her therein; to administer, care for and control all property which she has or may have in the Philippine Islands, leasing such real estate as he may deem convenient for the time, price and conditions most advantageous to her; to oust tenants and receive others in their places; to mortgage all or a part of the said property under the terms and conditions he may deem most advantageous to her, collecting and receiving rents and such other sums as are or may hereafter be due her in the said Islands, executing therefor such receipts and discharges as may be requisite and necessary; to attend the execution of all documents which may be proper under this power, which said instruments he shall subscribe in the manner required by their individual natures, to, in case it be necessary, to resort to the Courts, institute such actions as may be necessary, prosecuting the same to a final determination, and for this purpose to file such petitions and documents as may be required, appealing and prosecuting writs of error and such other proper remedies; to substitute this power in whole or in part, revoking the same at his pleasure; to, for the purposes of this power of attorney, do such acts and take such steps as she herself would do and take herself; authorizing him, the said José Camps, in case that under the new legal provisions it be deemed necessary that her husband should give bond under this power, to waive the necessity of such bond, this by virtue of the power which she has under the existing law. And for the faithful performance of this power of attorney, she hereby binds herself in accordance with law. So said and signed in the presence of the witnesses Francisco de la Fuente and Eusebio Legar of this City, who stated that they were not disqualified from being such witnesses. The said witnesses and the grantor of this power having been duly advised of the right which they
29 have to read this instrument themselves, waived such right, whereupon I, the notary proceeded to read it to them, and I so certify. Dolores Camps de Martinez. Juan J. Martinez y Alcobenda—Eusebio Legar—Francisco de la Fuente—Mariano Garcia Sancha. This first copy I issue at the request of the said Dolores Camps de Martinez on a sheet of paper, to all of which I certify. A record of the issuance of this certified copy having been made by me upon its original. Madrid, the day and year first above men-

tioned.—Mariano Garcia Sancha.—Legalization.—The undersigned notaries do hereby certify that Mariano Garcia Sancha's signature and rubric resemble the above signature and rubric, which are apparently in his own handwriting; and that he is a notary in and for this City to the best of our knowledge. Madrid, April 8th, 1872.—Jose Comacho.—Cipriano Perez Comacho.

I, Mateo Barroso y Bonzon, Professor of the Academy of Jurisprudence and Legislation of Madrid, a member of the Bar of this City, and Secretary of the Royal Audiencia of these Islands, do hereby certify that upon a petition presented by the Solicitor Mateo de San Buenaventura, asking that the attached power of attorney be declared sufficient, the following order was made by the Court: Royal Audiencia of Manila, this 31st day of August, 1872. The Members constituting said Court, whose names appear on the margin, upon an examination of the power of attorney executed by Dolores Camps y Montilla in favor of Jose Camps, ordered, in conformity with the opinion of the Attorney-General, and without prejudice, that the said power of attorney be and the same is hereby held to be sufficient for the purposes therein stated, that a
30 copy thereof be filed with the papers herein, and the original returned to the Solicitor who presented the same, with a certified copy of this order. Hechaveria.—Orquiola—Elio—Tovar—J. Canete—Davila—Cortez—Mateo Barroso. In compliance with the foregoing order I issue these presents in Manila, this 2nd day of September, 1872.—Mateo Barroso.

I, Francisco Hernandez y Fajarnes, attorney at law and notary public in and for this City, do hereby certify that Jose Camps y Montilla has exhibited to me a duly certified copy of his appointment as guardian of the minor, Amelia Roman, with the request that I issue a certified copy of the same, which said appointment is as follows: "In the Court of First Instance of the District of Intramuros, this 30th day of September, 1870, Luis Pitas Santamarina, Acting Judge of the said Court, having before him Jose Camps y Montilla, a Spanish resident of this City, of age, unmarried, administered to him the oath prescribed by law whereby the said Camps promised to faithfully discharge the duties of his office as such guardian of the minor Amelia Roman, his niece, and the daughter of his deceased sister, Josefa Camps, and to take care of her property and person, and defend and represent her in all matters in which she may be interested, either judicially or extrajudicially, with any person or corporation, whether ecclesiastical or civil, and to administer her said property in a proper manner, and for this purpose, should he deem it necessary, he will secure the advice of attorneys or other persons of learning and discretion who can give him such advice to the end that neither she nor her property will suffer any injury on account of any omission or negligence on his part. Whereupon the Court, in consideration of said oath, and of the bond on page 30, ordered that the said Jose Camps y
31 Montilla be appointed guardian of his minor niece Amelia Roman, empowering him to discharge his duties as such guardian, the Court promising to aid him insofar as possible within

the law, and directing that a certified copy of these proceedings be furnished him, the said Jose Camps y Montilla. So ordered and decreed the said Judge who signed hereon with the said Jose Camps y Montilla.—Luis Pita.—Jose Camps.—Severino Saracho.—The foregoing is a true copy of the original exhibited by the party in interest, and at his request I sign these presents in Manila, this 9th day of December, 1872.—Francisco Hernandez y Fajarnes.

No. 553. In the City of Madrid this 30th day of November, 1874, before me Mariano Garcia Sancha, Doctor of Jurisprudence, and a Notary in and for the said City, present the witnesses hereafter mentioned, personally appeared Amelia Roman y Camps, 18 years of age, accompanied by her husband, Luis Martinez Alcobendas, 29 years of age, Captain of Infantry in active service, residing at No. 6, room 3, Calle Villamagna, District of Salamanca, with personal cedulas issued September 25th, last, and August 25th, this year, respectively, and numbered 209 and 17, having the necessary legal capacity to execute this special power of attorney, with the permission of her husband first obtained, stated that the estates of her deceased parents and grandparents being now in course of liquidation in the Philippine Islands, and it being necessary for the final settlement thereof that some of the property be sold, and for this purpose certain arrangements, agreements and transactions made and had, it becomes necessary to have some person *person* to represent her in these matters, and being in doubt as to whether her husband has sufficient authority for this purpose, they have mutually agreed that she, the said Amelia Roman y Camps, in view of her minority, ratify in favor of Jose Camps y Montilla, a resident of Manila, the latter's appointment as guardian, and should it be necessary, she reappoints him as such guardian in order that he may represent her in all matters relating to the said estates and all questions incident thereto, the husband, Don Luis, authorizing the said Jose Camps, as a person of his entire confidence, to exercise the rights vested in him, and for this purpose the said Amelia Roman y Camps said that she hereby ratified and extended the appointment of her said guardian, Jose Camps y Montilla, a resident of Manila, and if necessary, that she hereby reappoints him as such guardian, that the necessary solemnities having first been complied with, he be appointed and confirmed as such guardian by the Court in the manner which the Court may deem proper, to represent her in the said estates of her grand parents and of her parents, Jose Roman y Blanco and Josefa Camps, the former being a native of Ronda, province of Malaga, Spain, and the latter of the City of Manila; to intervene in all arrangements, agreements and transactions connected with the sale of the said property, and finally, to represent her in all matters in which she may be interested, until the final settlement, liquidation, partition and distribution of the said estate, taking possession of whatever may belong to her as a result of such partition and distribution. The said Luis Martinez Alcobendas, as husband of the said Amelia Roman, stated that he

32

delegated to the said Jose Camps y Montilla, a resident of
33 Manila, all the powers which he had under the law, including the power to approve whatever his said wife may do in her behalf; to intervene in all matters concerning the said estate and in the sale of the property belonging thereto, whether divided or undivided, or after the partition is made; to administer, care for and control whatever property may be assigned to his said wife or may belong to her, taking possession and leasing the same for the time and under the terms and conditions which he may deem proper; to oust and eject tenants and admit others in their places, subscribing the necessary contracts of lease, whether public or private, with the necessary formality; to demand, collect and receive the rents therefor, and any other sum or sums due, or which may become due, to the said Amelia Roman from any source whatsoever; to compromise and compound all differences which may arise in the settlement of the said estates, either by arbitration or by reference to a third party in case of disagreement; to approve the partition either by a public instrument or by submitting the same for the approval of the Court; to take, without any limitation whatsoever, such legal steps as may be necessary until the final settlement of the said estate, and for this purpose to appear in all courts and file such motions and petitions as may be proper, and finally to do all that the said grantor could and would do in the premises as the husband of the said Doña Amelia, which said judicial matters he will prosecute to a final determination, appealing and prosecuting writs of error and such other remedies; to substitute this power in whole or in part, revoking the same at his pleasure; and to the faithful performance of his acts as guardian of the said
34 Amelia Roman and the power granted him by her husband Luis Martinez Alcobendas, the said husband and wife bind themselves in accordance with law; thereupon signing these presents with the witnesses Francisco de la Fuente, No. 7 Calle Union and Luis Wibre y Ballnerca, residing at Nos. 5 and 7 Aguardiente Street, who stated that they were not disqualified to act as such witnesses. The parties were then informed of the right which they have to read this instrument themselves, and having waived such right, I, the undersigned Notary, proceeded to read the same to them, to all of which, including the identity of the grantors, I certify.—Amelia Roman y Camps de Martinez—Luis Martinez Alcobendas—Luis Wibre y Ballnerca—Francisco de la Fuente—Dr. Mariano Garcia.—I issue this first copy at the request of the grantors on a sheet of paper, after filing the original of this power under number 553, and making a memorandum thereon of the issuance of this copy. Madrid, the day and year first above-mentioned.—Dr. Mariano Garcia Sancha.—Legalization. The undersigned notaries of the City of Madrid hereby certify that the foregoing signature, rubric and seal of the Notary Mariano Garcia y Sancha is genuine. Madrid November 30th, 1874.—Eulogio Marcella Sanchez—Cipriano Perez Alonso.

The foregoing is a true copy of the papers submitted to this Office, to which I, the Clerk, certify; the said Jose Camps further said that

it being more advantageous for himself and those whom he represented to execute this instrument of conveyance, and after assuring me that he has all the necessary legal capacity, declared that he and those whom he represented were the equal owners by inheritance and by virtue of the foregoing order so holding, of a piece of property on the Malecon del Norte, outside of the walls of this City, consisting of a large tract of land bounded on the north by Manila Bay in the District of Tondo, on the south by the river Pasig, on the east by the town and the canal leading to Vitas, and on the west by the lighthouse and the said Bay, which said tract of land is four hundred yards long by two hundred deep, and has been filled to the height of the Malecon in a strip two hundred and forty-eight yards long and fifty-five wide, and another strip of one hundred and twenty-eight yards long by fifty deep, making a total of twenty thousand and forty yards, superficial area; built upon the said land there is also a house belonging to them, of stone construction, with galvanized iron roof, which said house covers and area 26 yards long by 29 wide, that as such owners of the said land and building, they having inherited the same from Jose Camps, deceased, who acquired the said land by grant from the Government of these Islands according to a certificate issued by the said Government February 12th, 1849, which certificate he exhibited, he the said Jose Camps, deceased, having built the house in question at his own expense, he the said attorney and his grantors, have decided to dispose of all of the said property, but his ward, Amelia Roman, not having as yet attained the age of 25 years, and desiring that the sale of the property in any event be made in strict conformity with the law, he applied to the Judge of the District of Intramuros of this City for necessary authority to sell the share belonging to the said minor upon proper showing that such sale was necessary, and by an order of the said Court, in conformity with the recommendation of the Attorney-General, the sale was authorized to be made at public auction, which took place on the 17th of August, last, with the result stated in the certificate which I have before me, and the ratification of the said sale, which said certificate is as follows: In the Court of First Instance of Intramuros, this 17th day of August, 1877. The Court having convened, with the attendance of the Clerk, for the purpose of selling at public auction the land situated on the Murallon del Norte belonging to Jose Camps, referred to in these proceedings, which said land is mortgaged to secure the payment of seven thousand, seven hundred and seventy-seven dollars and 86 cents, local currency, to the Junta Administradora de Obras Pias, for the sum of twenty-eight thousand dollars, local currency, and the necessary notice having been given by the prior, Marcos Estrella, there appeared as bidders Alfredo Camps, who offered 29,000 dollars, local currency, for the property in question, and Manuel Alvarez, in the name of Francisco Hernandez y Fajarnes, who offered the sum of 32,000 dollars for the property, free of all liens and there being no higher bidder than the said Alvarez, the Court ordered that the property be sold to him as the agent of Francisco Hernandez y Fajarnes, for the aforesaid sum of thirty-

two thousand dollars. Whereupon the purchaser signed hereon, with the crier, after the Judge, to which I certify.—Luis O de Tarranco.—Francisco Hernandez y Fajarnes, by Manuel Alvarez, his agent.—Numeriano Adriano.—In the Court of First Instance of Intramuros, this 17th day of August, 1877, before the Honorable Judge, and in the presence of the Clerk, personally appeared Francisco Hernandez y Fajarnes, a Peninsular Spaniard and a
37 Notary Public of the Indes, of age, and a resident of the District of Binondo, and stated that Don Manuel Alvarez, having bought for him as his agent the land sold at public auction belonging to the estate of Jose Camps for the sum of thirty-two thousand dollars, local currency, he ratified the said purchase and requested the Court to declare the property sold to him, signing hereon, after the Judge, to which I certify.—O. de Tarranco.—Francisco Hernandez y Fajarnes.—Numeriano Adrjano. After the necessary proceedings, and after hearing the opinion of the Attorney-General, the Court by an order entered on the fourth instant, decreed as follows:

Court of First Instance of Intramuros, September 4th, 1877.—Order. In conformity with the recommendation of the prosecuting attorney, the sale at public auction made in favor of Francisco Hernandez y Fajarnes of the land situated on the Murallon del Norte, belonging to the estate of Jose Camps, is hereby approved, and upon payment of the purchase price, let the necessary conveyance be executed and the guardian of the minor, Amelia Roman, is hereby directed to deposit without failure the share of the minor in the said purchase price as provided in the Royal Order of the 27th of October, 1874. Done by the Court, to which I certify. Alvarez Guerra. —Numeriano Adriano. And the purchaser having complied with that part of the order concerning him, the undersigned having also complied therewith, by virtue of this public instrument now sells and transfers forever to the purchaser Don Francisco Hernandez y Fajarnes the ownership of and title to the said land and building, as described in the plan which will be attached to the certified copy of this deed, rubricated by me, the Clerk, for the sum of
38 thirty-two thousand dollars, local currency, the receipt of which he hereby acknowledges, to which I certify, hereby transmitting to him all his rights and actions to and over the said property that he may dispose of it at his own will, stating further that the said property is free from all liens, that he guarantees the sale of the same, and will defend such title whenever called upon. Francisco Hernandez y Fajarnes, a resident of this City, of age, personally known to me, being present and having been informed of the sale made in his favor, said that he accepted the same under the terms and conditions above set forth, and that pursuant to a previous agreement he, in turn hereby transfers the said land and building to Juan Jover y Serra, a merchant of Barcelona, represented in this City by his attorney in fact, Eduardo Vidal, according to the power of attorney hereto attached, and that he hereby transfers all his rights hereunder to the said property to the aforesaid Juan Jover y Costas for the said sum of thirty-two thousand dollars, which he

hereby acknowledges to have received from the attorney in fact, Eduardo Vidal, in local currency, to which I the undersigned clerk, certify, authorizing the vendee to dispose of the said property in such manner as he may see fit, hereby transmitting to him whatever rights and actions have been conveyed to the present vendor by Jose Camps as though the latter had directly sold the property to Juan Jover y Serra, promising to at all times consider this transfer as irrevocable, waiving any action or right of action which he may have. And the said Eduardo Vidal, a resident merchant of this City, single, and personally known to me, being also present, stated that by virtue of the power conferred upon him by Juan Jover y Serra he hereby accepted, in his name and stead, the sale of
39 the said property hereby made by Francisco Hernandez y Fajarnes in favor of his principal, the said Juan Jover y Serra, hereby acknowledging the receipt of the title deed of the said property, stating further that he accepted such transfer and conveyance as though made directly to his principal by the said Jose Camps, and that he therefore exempts the said Mr. Hernandez from any responsibility by reason of this sale, binding his said principal to the faithful compliance with the terms of this instrument. The parties finally declared that in this double contract there has been neither fraud nor prejudice of any kind; that the thirty two thousand dollars, fixed as the purchase price they consider as a just compensation for the land and building thereon, and that should the said property be worth more or less than the price stipulated, they hereby mutually donate any difference, waiving whatever right they may have under the law relating to contracts in which there is lesion to the extent of one-half or more of the purchase price, and of the period of four years within which the recission of the contract, or the reduction of the price should be sought. Whereupon they signed these presents after having read this instrument themselves and confirmed and ratified the same, Quintin Joaquin and Maximo Lim, of age, and residents of this City, person-lly known to me, having also signed as witnesses—No. 647. In the City of Barcelona, this 12th day of May, 1877. Before me, Jose Falp, notary public in and for this City, and in the presence of the witnesses hereinafter mentioned, personally appeared Juan Jover y Serra, of age, married and a resident mercha-t of this City, personally known to me, with registration tax certificate number three thousand seven hundred and thirty-six, issued by the mayor of this City, and apparently
40 having the necessary legal capacity to execute this instrument, manifested, that he hereby gives and grants special power to Eduardo Vidal, a native of Marseilles, and a merchant of the City of Manila to, in his name and stead, acquire and buy the land and warehouses in the City of Manila which he, the said grantor, may designate by private letter to him, for the purchase and under the terms and conditions that his said attorney may see fit, designating such lands and warehouses by their respective names, metes and bounds, paying the price thereof, and executing such instruments as may be necessary with all the formalities which may be required; which said lands and warehouses, once acquired and pur-

chased as aforesaid, he shall administer and control, leasing them in whole or in part, for such period and price, and under such terms and conditions as he may see fit, ousting or ejecting tenants; to make all necessary repairs and improvements upon the said property; to object to or prevent alterations by the tenants and for this purpose to apply to the courts for the necessary writs, and pay the taxes or other assessments upon the same, protesting and appealing if he should consider such taxes or assessments excessive, obtaining their reduction, and signing such leases and other documents as may be required; should it be necessary, likewise to appear before any authority, courts of justice, or any other tribunals of whatever grade or jurisdiction, instituting and prosecuting to a final determination such actions and proceedings, whether civil or criminal as may be necessary, accepting service of notices and summons, even though they be personal, to give bonds and recognizances, to file
41 motions, introduce evidence, challenge judges and clerks for cause, to accept notice of judgments and decrees, abiding by such as may be favorable and appealing and prosecuting all other legal remedies, including that of writ of error, executions, attachments, imprisonments, sales at public auction, and to take such steps as may be necessary in all such actions and proceedings in accordance with the legislation and practice existing in the country where they may be instituted; and generally, and for the purposes of this power of attorney, to do all that his said grantor would do if present, hereby confirming and ratifying the powers granted him, without limitation, with full power of substitution and revocation, hereby promising to ratify whatever his said attorney or his substitute or substitutes may do by virtue hereof. In witness whereof, they sign these presents, Antonio Bascos Dinban and Miguel Lopez del Rincon, residents of this City, being witnesses, the parties and witnesses all being known to me, and to whom I read this instrument before they signed the same, at their own request, and notwithstanding the fact that the law authorizes them to read it personally; to all of which I certify.—J. Jover y Serra—Before me, Bascos Dinban—Miguel Lopez.—(Signed) Jose Falps.

The foregoing is a true copy of the original recorded in my protocol of public instruments for the present year under number six hundred and forty-seven, issued on a sheet of paper, number 1,390,-494. And at the request of the said Juan Jover y Serra I sign these presents in the City of Barcelona the day, month and year first above mentioned. (Signed) Jose Palps.—The undersigned notaries, of the Notaries Association of Barcelona, residents thereof, do hereby certify as to the authenticity of the signature and rubric of the
42 notary Jose Falps attached to the foregoing instrument. Barcelona, the day, month and year above set forth.—(Signed) Constantino Gibert.—(Signed) Francisco Javier Moreno. On the margin there is a seal as follows: "Notaries' Association of the Territory of Barcelona: 12 reales: May 12th, 1877".—The foregoing is a true copy of its original, signed by me, to which I certify.—(Signed) Jose Camps.—Francisco Fernandes Ferjarnes—rubric—Eduardo Vidal—rubric—Quintin Joaquin—rubric—Mariano Lim—rubric—

Before me, Numeriano Adriano—rubric—Note on margin: At the request of Eduardo Vidal, a certified copy of this document was issued on two sheets of paper, to which I certify—Adriano—rubric—Note: At the request of Jose Camps y Montilla a first copy of this instrument was issued on one sheet of paper for the present year. Manila, July 11th, 1896. To which I certify.—Adriano—rubric.

I certify that the foregoing is a literal copy of its original on file in this Office and in witness thereof, I sign and seal these presents in Manila this fourteenth day of August, 1903. M. de Yriarte, Chief of the Bureau of Archives, ex-Officio Notary Public.

43 UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Record No. 337.

JOAQUIN SALVADOR Y MIRALLES, No. 112 Escolta, Binondo, Petitioner.

The undersigned petitioner appears and asks this Honorable Court for permission to amend his petition in the above entitled cause, as follows:

That the following be substituted for paragraph 7 of his said petition:

Joaquin Jover y Costas was married to Consuelo Vidal Moragas, from whom he was divorced forever under and by virtue of a final judgment of the Courts of Barcelona, Spain, dated July 30th, 1903.

Manila, January 20th 1904.

(Signed) JOAQUIN JOVER Y COSTAS,
By J. SALVADOR, *His Attorney.*

UNITED STATES OF AMERICA,
Philippine Islands:

CITY OF MANILA, *January 20th*, 1904.

I hereby certify that Joaquin Salvador y Miralles, whose signature appears above, appeared before me, he being known to me to be the person who signed the foregoing petition, and stated under oath that according to his knowledge and information the same is true, exhibiting his registration tax certificate 162531, dated
44 Manila, June 19th, 1903.

[NOTARY'S SEAL.] (Signed) RAFAEL PALMA,
Notary Public.

My commission expires December 31, 1904.

Indorsed: "Received in the Court of Land Registration of the Philippine Islands, January 20th, 1904, at 4:10 P. M. L. D. No. 1362.

Record No. 337.

Report.

To the Honorable Judge of the Court of Land Registration:

The undersigned examiner of this judicial district, having examined the title deeds of Joaquin Jover y Costas, represented by Joaquin Salvador, has the honor to report as follows:

1. In the Register of Property, Inscription No. 1, lot number 793, page 23 of Volume 15 of the Binondo Section, and 52 of the Archives, the following appears: (A) That Jose Horacio, Aurora, and Maria Dolores Camps, and the minor, Aurelia Roman, the surviving child of Josefa Camps, were declared to be the heirs of their deceased father and grandfather by an order made and entered on the 20th of September, 1870, by the Court of First Instance of Intramuros, whereby Jose Camps y Montilla was also appointed guardian of the said minor Aurelia Roman, and was held to be the legal representative of his brother Horacio, and of his sisters, Aurora and Maria Dolores: (B) That by a grant from the Supreme Gov-
45 ernment of these Islands, the said Jose Camps, deceased, became the owner of a tract of land 400 yards long by 200 wide on the Malecon del Norte of the District of Binondo, whereupon stand two adjoining warehouses of strong materials, and one house, which has since disappeared, which said land is now mortgaged to secure the payment of a loan of 7,777.86 dollars in favor of the Obras Pias; (C) That the said property was sold at public auction in the Court of First Instance of Intramuros August 17th, 1877, to one Manuel Alvarez, as agent for Francisco Fernandez y Fajarnes for the sum of 32,000 local currency; and as heirs of the deceased, Jose Camps, his son, Jose Camps, Jr., for himself, and in behalf of his brother, Horacio, and his sisters Aurora and Maria Dolores Camps, and in his capacity as guardian of Aurelia Roman, having been duly authorized by the Court, he sold the said property by a public instrument to Francisco Hernandez y Fajarnes, who in turn transferred the same, for the same price of 32,000 dollars, local currency, to Juan Jover y Serra, represented by Eduardo Vidal; (D) Juano Jover y Serra died without a will in the City of Barcelona February 22nd, 1879, and at the request of his surviving wife, Maria Rosa Costas y Llucia, his children Miguel and Joaquin Jover y Costas were declared to be his heirs March 7, 1879, by the Court of First Instance of San Pedro de Barcelona; (E) Miguel Jover y Costas also died without a will, April 29, 1888, and his mother, Maria Rosa Costas y Llucia, and his brother, Joaquin, were declared to be his heirs May 29, 1888,
46 by the Court of First Instance of the City of Barcelona; and (F) That by a public instrument executed in the City of Barcelona before the notary public Manuel Larratea y Catalan, August 22nd, 1888, Maria Rosa Costas and Joaquin Jover made a partition of the property of the estate of Miguel Jover, and agreed that her share in the property in question be awarded to Joaquin Jover in payment of his share in the estate. Subsequent to this partition the said Rosa Costas and Joaquin Jover executed another

instrument wherein it was set forth that Joaquin and his deceased brother, Miguel Jover, had built, at their own expense, two warehouses upon the land in question, according to certain summary proceedings approved November 17th, 1888, and recorded December 6th, following, in the office of the notary Enrique Barrera; and that the said warehouses and land belonged to the two brothers, Miguel and Joaquin Jover, equally, and that the share corresponding to the former became the property of the latter by virtue of the said agreement of partition.

2. In the second inscription of the property in question it appears that there were built upon the same, by Joaquin Jover y Costas, two buildings, the first consisting of two adjoining warehouses of strong material, forming a single structure, and the other being a warehouse with galvanized iron roof, at a cost of 8,000. dollars and 3,500 dollars, respectively.

3. On the margin of the first inscription it appears that the mortgage on the said property was canceled, according to marginal notes, pages 125, 13 and 32 of the old books of the former Register of Mortgages, now abolished.

4. The first inscription is partly corroborated by a deed of
47 sale executed before the notary public, Numeriano Adriano, September 5, 1877.

5. The documents examined by me show that the owner of the property in question is Joaquin Jover y Costas. The present metes and bounds of the property can be considered as correct.

6. The Registry of Property shows no act or contract unfavorable to petitioner's title, and investigations made by the undersigned do not disclose any facts contrary to the allegations of the petition.

Opinion.

Upon the foregoing report, the undersigned is of the opinion that the title of Joaquin Jover y Costas is good and may be registered.

Manila, January 26, 1904.

(Signed) AGUEDO VELARDE.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of Land Registration.

Record No. 337.

JOAQUIN JOVER Y COSTAS, Represented by Joaquin Salvador, Petitioner.

The petitioner is hereby directed to, within, eight days, from the date hereof, correct the following error in the technical description of the plan:

The plan shows 24.64 mts. as the longitude of line "C" "D", whereas the technical description shows 24.60 mts.

Witness the Honorable S. del Rosario, Judge of the said
48 Court this 27th day of January, 1904.

(Signed) J. R. WILSON,
Clerk of the Court.

[SEAL OF COURT.]

UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Record No. 337.

Amendment to Description.

JOAQUIN JOVER Y COSTAS, Represented by Joaquin Salvador, Petitioner.

The undersigned petitioner appears before this Honorable Court and respectfully asks permission to amend the technical description presented by him in the above entitled cause:

The said technical description states that line "C""D" is 24.60 mts., whereas it should be 24.64 mts., as shown in the plan.

Manila, February 3, 1904.

(Signed) J. SALVADOR.

UNITED STATES OF AMERICA,
Philippine Islands:

CITY OF MANILA. ——, —, 1904.

I hereby certify that Joaquin Salvador appeared before me, he being known to me to be the person who signed the foregoing petition, and declared under oath that the foregoing petition is true to the best of his knowledge and information, exhibiting his registration tax certificate No. 162531, issued in Manila, June
49 19th, 1903.

(Signed) J. R. WILSON.

[SEAL.] *Clerk of the Court of Land Registration of the Philippine Islands.*

UNITED STATES OF AMERICA,
Philippine Islands:

Registration of Title.

Court of Land Registration.

Case No. 337.

To the Attorney General of the Philippine Islands; the Collector of Customs of the Philippine Archipelago; the Municipal Board of the City of Manila; Carmen & Company, No. 4 and O-Tiongsing

No. 57, both of Calle Barraca; Francisco Reyes, No. 21, and Castle Bros. Wolf & Sons, No. 18 to 24, both of Plaza del P. Moraga; Marcaida & Co., No. 43 Calle Norzagaray; and Compañia Maritima, Muelle del Rey, No. 319, all of the District of Binondo; José Lim, Muelle de la Reina, No. 169; and Smith Bell & Co., Muzallon, No. 31, both of the District of San Nicolas; and Gutierrez Hermanos, Calle Beaterio, No. 116, District of Intramuros, all of the City of Manila, P. I., and to all whom it may concern:

Whereas an application has been presented to said court by Joaquin Jover y Costas, by his attorney in fact, Joaquin Salvador, Calle Escolta, 112, District of Binondo, City of Manila P. I., to register and confirm his title in the following described land; a piece of land, with buildings marked A. and B. on plan, excluding the remainder situated on the Malecon del Norte, District of San Nicolas,
50 City of Manila, P. I., more particularly bounded and described as follows:

Beg. at the point marked "A" on the plan being 30.90 N. from S. E. corner of dry dock measured along east wall of same, and 33 M. measured at right angles E. from said wall—thence run south 89° 36′ E. along north line of Malecon del Norte 336.80 m. to point "B", said point being 10.90 N. 1° 10′ W. and 20.33 N. 89° 36′ W. of center of Vitas bridge, thence N. 1° 10′ W. 27.30 m. to point "C"; N. 2° 7′ W. 24.64 m. to point "D"; N. 5° 24′ W. 138.85, to point "E"; N. 89° 35′ W., 327.50 to point "F"; S. 1° 33′ E. 190 m. to point of beginning, containing 63342.7025 sq. m.; all pts. referred to marked on plan; bearings magnetic; date of survey December 7th, 1903.

Bounded on the north by Manila Bay,—East by Estero Vitas; South by Malecon del Norte and West by property of the Insular Government.

You are hereby cited to appear at the Court of Land Registration to be held at number 138 Calle Real, Intramuros, City of Manila on the fourth day of March, A. D. 1904, at nine o'clock in the forenoon, to show cause, if any you have, why the prayer of said application shall not be granted; and unless you appear at such court at the time and place aforesaid, your default will be recorded and the said application will be taken as confessed and you will be forever barred from contesting said application or any decree entered thereunder.

Witness S. del Rosario, Judge of said Court, this 6th day of February, in the year 1904.

[SEAL.] (Signed) J. R. WILSON,
Clerk of said Court.

51 Indorsed.

UNITED STATES OF AMERICA,
Philippine Islands:

I hereby certify that on this date I have posted a copy of this notice in a prominent place upon the land described therein, situated on the Malecon del Norte of the District of San Nicolas.

Binondo, City of Manila, and that I have also posted a certified copy thereof in a prominent place in the Municipal Building of the City of Manila.

Manila, February 11th, 1904.

JAMES J. PETERSON,
Sheriff of Manila,
By IGNACIO AQUINO,
Deputy Sheriff.

Fees, P2.24.
Paid by Petitioner.

Then follows post office receipts for registered letters addressed to the parties named in the foregoing citation.

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration of the Philippine Islands.

Record No. 337.

To Joaquin Jover y Costas, by his attorney in fact, Joaquin Salvador, Calle Escolta, No. 112, Binondo, Manila, Greeting:

You are hereby notified that there has been received in this Court the report of Aguldo Velarde, the examiner of titles for the Judicial District of Manila, relative to the petition presented by you for the registration of the piece of property on the Malecon del Norte of the Pasig River, adjoining the lighthouse of San Nicolas, Manila,
52 said report being favorable to the registration of your title.

The public hearing of your petition will take place at nine o'clock A. M., March 4th, A. D. 1904, at the session to be held by the Court of Land Registration in Manila.

Manila, February 11, 1904.

[SEAL.] (Signed) J. R. WILSON,
Clerk of Said Court.

Then follows a post office receipt for a registered letter addressed to Joaquin Jover y Costas, care of Joaquin Salvador, Manila.

Then follows a copy of the foregoing citation printed in a local newspaper under date of February 13, 1904, addressed to The Attorney-General of the Philippine Islands, the Collector of Customs of the Philippine Archipelago, The Municipal Board of the City of Manila, and the other parties therein mentioned.

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Record No. 337.

JOAQUIN JOVER Y COSTAS, Care of Joaquin Salvador, Petitioner.

I, J. R. Wilson, Clerk of the Court of Land Registration of the Philippine Islands, do hereby certify that in compliance with
53 the order of the said Court a notice relating to petition for registration number 337, by Joaquin Jover y Costas, represented by Joaquin Salvador, was published in the daily newspapers of this City, La Democracia on February 13th, 1904, and the Manila Times of February 16th, 1904, in Spanish and English respectively; and that the Attorney-General of the Philippine Islands, the Collector of Customs of the Philippine Archipelago, the Municipal Board of the City of Manila, Carmen & Co., O-Tiongsing, Francisco Reyes, Castle Bros., Wolf & Sons, Marcaida & Company, Compañia Maritima, José Lim, Smith, Bell & Company, and Gutierrez Hermanos, were duly notified by mailing to each of them on February 10th, 1904, a copy in Spanish of the said publication, duly registered. In witness whereof I issued these presents in Manila, this 18 day of February, 1904.

[SEAL.] (Signed) J. R. WILSON,
Clerk of the Court.

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

The hearing of the cases set for to-day is continued to the 18th of March, 1904.

Witness the Honorable S. del Rosario, Judge of said Court, this 4th day of March, 1904.

(Signed) J. R. WILSON,
Clerk of Court.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of Land Registration.

Record No. 337.

54 JOAQUIN JOVER Y COSTAS, Petitioner.

To the Honorable, the Attorney-General and the Attorney for the City of Manila:

Please take notice that on this day there was filed in the Court of Land Registration a copy of the grant by the Spanish Government

in the Philippine Islands to José Camps, under whom the petitioner claims, of the land which is the subject of the above-entitled petition. And that on Saturday, the 26th inst., we will move the Court to set a day for the continuance of the hearing of the said petition.

Manila, March 24th, 1904.

PALMA, GERONA Y MERCADO,
By RAFAEL PALMA,
Attorneys for Petitioner.

Received copy this 24th day of March, 1904.
FERNANDO SALAS.
MODESTO REYES, *City Attorney.*

PETITIONER'S EXHIBIT "A."

Copy.

Don Jose Luis de Baura y Soriano, lawyer of this royal court of chancery, knight of the Military Order of San Juan of Jerusalem; member of the Royal Economical Society of "Friends of the Country," member of the general commission of statistics; and secretary of the superior civil government of these Islands, etc.

I certify that on the petition filed by Don Jose Camps, oficial primero jubilado of this office, in which petition he asks for the concession of a piece of land 200 brazas long and 100 brasas wide, in the lowland back of the northern wharf (Murallon del Norte) of the Pasig River, the superior decree, hereinafter set
55 forth, was issued on February 12, 1859:

"Acting upon the petition in which Don Jose Camps on November 17, 1858, solicited a grant for the land which he fills in at his expense on the lowlands situated along the northern wharf (Murallon del Norte) and on the north side thereof, on the right side of the mouth of the Pasig River, with an extension of 200 brazas in length and 100 brazas in width, beginning at a distance of 25 varas (Spanish yards) west of the bridge built on said wharf for the connection of the waters of the river and of the bay from the Beach of Binondo, as appears on the plan hereto attached, to which land, after it has been filled in, he intends to move his artistic establishment called 'Camps é Hijos,' and a manufactory of hemp rope; in view of the report made on the 26th of the said month of November by the Alcalde Mayor 1.° of Manila, who, after consultation with the director of public works of the province, is of the opinion that the waste land asked for should be granted to Camps, said land being at present covered by the sea, and being far from the houses situated on the Binondo beach, it is very suitable for purposes of maritime commerce and it is convenient for the purpose of public adornment, that the foundary, ironworking and scientific instrument establishment of Camps é Hijos be located on that place, provided that the said Camps shall agree not to erect such buildings

with brick and stone or strong materials, for the reason that the same is outside of the military lines; in view of the report made on December 17, 1858, by the Commanding General of Marine, in agreement with the captain of the port regarding the convenience of such concession for the merchant marine and public adornment, but
with the precise condition that Camps shall leave a distance
56 of 16½ varas between the outside edge of the wharf and
the intended building, which width is the one fixed for wharves; in view also of the report of the subinspector of engineers, with the approval of the Commander of the post, proposing that the concession asked for shall not be granted for a building of strong materials, on account of the forts of the place, and that the building to be erected shall consist of only one story, and shall be removed at the expense of its owner, at the discretion of the superior authority of the Islands, when the public interests so require, taking into consideration the circumstances and official and industrial merits of the said Don Jose Camps, and the offer of protection stated in the decree dated November 4, 1858, when refusing the sale, asked for by him, of an irregular piece of land adjoining the new Cuartel del Carenero, and in conformity with the above-mentioned reports of the commanding general of marine, the subinspector of engineers, and the civil chief of the Province of Manila, I hereby decree: Don Jose Camps, *comisario de guerra honorario, oficial mayor jubilado* of the office of the secretary of his superior government, and director of the ironworking and nautical instrument establishment of Camps é Hijos, is granted the possession and ownership of a parcel of land 200 brazas in length and 100 brasas in width, covered at present by the waters of the sea, near the Binondo beach, which land is situated alongside the Murallón del Norte, and requested authority to fill in the same at his expense is also hereby granted, subject to the following conditions and restrictions.

First. The land to be filled in shall form a quadrangle 200 brazas long and 100 brazas wide; beginning on the longer side, nearest to the Pasig River, at a point 25 varas from the bridge connecting the
waters of the river and of the bay and running parallel with
57 the wharf toward the lighthouse.

Second. The buildings to be erected by Camps on this new land so granted shall be located along the said longer side parallel to the breakwater, separated from the edge of the exterior wharf for its whole length, a distance of 16½ varas, which is the width required for wharves.

Third. The said buildings shall consist of only one story, no materials of the kind prohibited in the military zone shall be employed therein, and shall be roofed with zinc, tarred paper, nipa, or other similar materials.

Fourth. The said buildings shall be removed at the expense of Don Jose Camps or his successors whenever, at the discretion of the superior authority of the Islands, the military service so requires. Let the interested party be notified and a certified copy be issued to him.

NORZAGARAY.

At the request of the interested party I issued these presents at Manila, on the first day of July, eighteen hundred and sixty-two.

Seal reading: Supreme Government of the Philippine Islands, Secretary's Office."

58 UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

At a session held by the Court in the City of Manila March 26, 1904, at 10:20 A. M., the hearing of case No. 337, Joaquin Jover y Costas, Petitioner, was renewed:

Attorney R. Palma and the witness whose testimony appears below, appeared for petitioner, and Attorney F. Salas and Attorney M. Reyes appeared for the Insular Government and the City of Manila, respectively:

Testimony of Joaquin Salvador.

Having been duly sworn he stated that he was 28 years of age, single, and a merchant of this City, residing at 112 Escolta, Binondo.

Examination by Mr. PALMA:

Q. I hand you this document marked Exhibit "A," and ask you whether you recognize it?

A. Yes, sir.

Q. What is it?

A. I had the original of this document in my hands.

Q. Have you compared this copy with the original?

A. Yes, sir. I desired to have a copy of the same for the registration of the property. I realized that it was a very important document. I have brought the copy with me, and have cabled to Spain for the original, now in the hands of the owner of the property who has all the title deeds and papers.

Q. Have you compared that copy word by word with the original?

A. Yes, sir.

59 Mr. PALMA: I now ask the Court, in view of the fact that this document presented by us, which has been duly identified by the witness, counsel for the other side be required to state whether or not there is any objection to the admission of the same, that we may know what evidence we will have to introduce to meet their objections. In my opinion there is no doubt that this is a true copy of the original.

Mr. REYES: I ask the Court to require the petitioner to state whether this is the only document they have in support of their petition, so that we can prepare our opposition thereto. On August 8th, 1902, the petitioner, or the gentleman who has just testified,

promised to obtain the original document and submit it to the City of Manila.

The COURT: Counsel for the opposition can present any objection they wish upon the assumption that the copy of the document introduced is true and correct, and the 15th of April is hereby set for the presentation of their respective objections and on the fifth of May the hearing of this petition will be renewed.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of Land Registration.

In the Matter of the Petition of JOAQUIN JOVER Y COSTAS.

Opposition of the City of Manila.

Now comes the City of Manila, by its attorney, Modesto Reyes, and objects to the registration of the land described in the petition in favor of the petitioner for the following reasons:

60 1. That it is a municipal corporation created by an Act of the United States Philippine Commission and is the keeper, and has under its charge and control, all public property, things and places within the jurisdiction and limits of the municipal boundaries.

2. That the land sought to be registered is within the jurisdiction and limits of the City of Manila.

3. That the land sought to be registered belongs to the public domain, being of a public character devoted to the use of the public.

Wherefore the City of Manila prays the Court that the petition for the registration of the land in question be denied, with costs.

(Signed) MODESTO REYES,
City Attorney, for the City of Manila.

UNITED STATES OF AMERICA,
Philippine Islands:

CITY OF MANILA, 4/11/1904.

I certify that Modesto Reyes personally appeared before me and signed the foregoing statement, and swore that everything therein contained was true, exhibiting his registration tax certificate No. 141197, issued in Manila April 27th, 1903.

[SEAL OF COURT] J. R. WILSON,
Clerk of the Court of Land Registration of the Philippine Islands.

61 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of Land Registration.

Record No. 337.

In the Matter of the Petition of JOAQUIN JOVER Y COSTAS.

Opposition of the Insular Government of These Islands.

The undersigned Acting Attorney-General, in behalf of the Government of the United States, appears and represents:

That the land sought to be registered herein belongs to the public domain. Wherefore, in behalf of the said Government, he objects to the registration of the same and prays that the petition be denied with costs.

Manila, April 12th, 1904.

(Signed) GREGORIO ARANETA,
Acting Attorney-General.

Received copy.
PALMA, GERONA & MARCADO,
By M. MERCADO.

THE UNITED STATES OF AMERICA,
Philippine Islands:

CITY OF MANILA, *April 15th*, 1904.

I certify that Gregorio Araneta personally known to me sign- the foregoing petition, stating under oath that everything contained therein is true to the best of his knowledge and information, exhibiting his registration certificate No. 162565, dated Manila, June 20th, 1904.

(Signed) J. R. WILSON,
Clerk of the Court of Land Registration of the Philippine Islands.

62 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of Land Registration.

At a session held by the said Court in the City of Manila on the fifth day of May, 1904, at nine-twenty-five A. M., the hearing of case No. 337, Joaquin Jover y Costas, Petitioner, was resumed.

Joaquin Salvador y Miralles, assisted by his Attorney, R. Palma, appeared for petitioner; M. Reyes, appearing in behalf of the Acting Attorney-General, and A. P. Moran in behalf of the City of Manila.

Counsel for petitioner offered to introduce three different kinds of evidence, to-wit: documentary, oral and ocular. The docu-

mentary proof, according to attorney Palma, consists, first, of a document evidencing the grant by the Spanish Government, certified to by the Secretary of the Philippine Islands in the year 1859; second, of the title of acquisition, that is to say, the instrument of sale in favor of Joaquin Jover y Serra, through Eduardo Vidal, and third, of a certified copy issued by the Registrar of Title of all entries and marginal notes relating to the property. The Court admitted all of the said documents over the objection of Mr. Reyes, and the same were marked Exhibits "D," "E" and "F," respectively. Thereupon Counsel for Petitioner presented to the Court for examination the following witnesses:

Testimony of Eduardo Vidal.

Having been duly sworn, he testified that he is 62 years of age, single, a merchant, and a resident of this City, living at
63 209 Calle Bilibid.

Examination by Attorney PALMA:

Q. Do you know the land which is the subject of this inquiry?

A. Yes, sir.

Q. How long have you known that land?

A. I have known that land since 1875; I made inquiries as to whom it belonged in 1877 in accordance with an agreement with my friend Juan Jover y Serra, tried to buy it and actually did buy it through the then notary of this City, Francisco Hernandes y Fajarnes, for the sum of thirty-two thousand dollars, local currency.

Q. For whom did you buy the land?

A. For Mr. Juan Jover y Serra.

Q. What relations if any did you have with Joaquin Jover y Serra?

A. Mercantile and friendly relations.

Q. Were you his attorney here in Manila?

A. Yes, sir.

Q. Did you at any time administer this property, thus bought by Joaquin Jover y Serra?

A. Yes; from 1877 to 1885, when I turned it over to him, I think.

Q. Did you take possession of the land?

A. Yes, sir.

Q. When did you take possession of the land?

A. Immediately after the purchase in 1877.

Q. When you took possession of the land, did you find upon it any traces of the ownership of the vendor?

64 A. Very slight; they said that the land was four hundred meters long by two hundred deep.

Q. What I want to know is, whether you found any traces of the boundaries of the property at that time?

A. They were very simple, because there was no other land there, consequently all the land there was that which had been filled in.

Q. During the period of your administration of the property did you exercise any acts of ownership upon the land?

A. Yes, sir.

Q. What were they.

A. I leased part of the land already filled in to various persons and filled in the rest, and I almost doubled the area of filled land.

Q. Would you recognize the land, if a plan of the same were presented to you?

A. Perfectly well.

Q. Look at this plan (showing the plan to witness) and please state to the Court whether the same is a graphic representation of the land in question?

A. (The witness explains from the plan.) At that time there was a cantilever bridge at this point; and this house (indicating point "A" on the plan) did not exist; all this portion (indicating the land between the building of Jose Lim Smith, Bell and Carmen) was not filled in; here (indicating buildings occupied by the Chinaman Ong Tiongsing) I constructed a warehouse. There was a house adjoining this warehouse, which exists no more, and which I think was occupied by one Brown.

65 Q. During your administration, did you make any effort to survey the land?

A. The land had been perfectly surveyed. It is four hundred meters long by two hundred meters deep, taking point "B" on the map as a starting point.

Q. Do you know how that part of the land which does not now exist, was filled in?

A. With ballast which I used to buy from one Rodriguez, brought from the Bay, which Rodriguez having no place to put, I purchased from him to fill in the land.

Q. Upon the rest of the land, that is to say, that part which according to the plan is apparently covered by the sea, have you also done any work of any kind there?

A. Here, on the boundary marked with letter "B" I continued the filling, line "B" being the side limit (indicating on the plan).

Q. How long did you continue that work?

A. Until 1885.

Q. When you took possession of the land, did you find that the work of filling-in had been commenced?

A. Yes, it began at the estero de Vitas.

Q. Please state to the Court what part of the land was filled in at that time?

A. A small strip in front. All this front part (indicating on the plan) was filled in to a width at some places of ten meters from the water, and (indicating on the plan) it continued increasing all the way up to the bank of the estera of Vitas, and at that time those tenants occupying the part of the land on the seashore filled it in themselves and continued to fill in from time to time.

66 Q. Please state to the Court whether, at the time you took possession of the land there were any houses upon the same, or any part thereof.

A. There was none but the house I have already said was occupied by Brown, that was all. It was a place for a coalyard, fenced in with bamboo; here (pointing on the plan) was a warehouse constructed of bamboo with a galvanized iron roof occupied by Mr. McLeod.

Q. While you were in charge, were there any houses or not?

A. Yes, the one that I built, with a galvanized iron roof, adjoining the house that already existed, and that was all. I do not include the nipa shacks there, because that was a long time ago.

Q. On what part of the land were those nipa shacks or huts?

A. On the back.

Q. Can you point out on the plan on what part of the back of the land those nipa shacks were scattered?

A. All along the back line (indicating on the plan).

Q. And those nipa shacks paid any rent to you?

A. Yes, sir; they did.

Q. The rent collected by you; did you note it in a book?

A. Yes, sir; on that book there (pointing to the document which the petitioner intended to introduce in evidence).

Q. I show you this book and ask you to state what these documents are (showing to the witness various documents)?

A. Those are notes of the rent collected by me during the years 1877 to August 1885.

67 Mr. PALMA: I now introduce in evidence these three documents and ask that they be marked exhibits "D", "E" and "F".

Mr. REYES: I would like to know what the petitioner desires to prove by means of that book. It has no relation to the subject-matter of this petition.

Mr. PALMA: The petitioner desires to prove by this book that since the time he acquired the land he has been in possession of the same, having exercised thereupon acts of ownership as well as of possession, and I think that such would be relevant and material evidence.

Mr. REYES: Counsel objects for the reason that this book does not show what lots are referred to, and secondly because I don't see here any recognition of that right of ownership or possession.

The COURT: The documents are admitted and marked exhibits "D", "E" and "F".

Mr. REYES: With my exception.

Q. During the time that you were in charge of the land, was there any claim made thereto by the Government, or any department of the Government of these Islands at that time?

A. Once I had some question with the marine authorities; they had a guard there who had a house upon the land. As the land was being improved, I told them to remove the house. They claimed that the land belonged to them and refused to remove the house. After several interviews with the Captain of the Port, and with the Naval Commander, it was decided that the house could remain there,

giving me a letter at the same time, wherein they recognized
68 and acknowledged that the land belonged to the petitioner and agreed to remove the house when requested; that letter must be among the title deeds.

Q. To whom did you turn over the administration of the property after that.

A. I think it was to Mr. Baranagan.

Q. In what year did you cease to be the administrator of the property?

A. In the year eighteen eighty-five, after the death of Don Juan for whom I had bought the same, and his children appointed Baranagan.

Q. Please state whether or not, while you were administrator of the property, boats were beached on that land?

A. At least I have not authorized any one to do so, and without my authority, I don't think that anybody ever did so.

By Mr. REYES:

Q. You said that you bought that land?

A. Yes; through Francisco Hernandez.

Q. Did you, before you purchased the land, examine the same?

A. Yes, sir.

Q. Did you find that the land had the same area that you have stated; when you bought it, you found that it had exactly the same area?

A. Filled in or not?

Q. Filled in?

A. Yes, sir, the same.

Q. Did you examine that portion of land?

A. Yes, sir.

Q. Did you figure out the price with reference to that portion?

A. No, sir; I figured out the price, that is to say, I did not
69 figure it out, but simply asked the owner how much he wanted for the land covered by the grant, and they told me thirty-two thousand pesos, and I paid that much?

Q. Did you examine the grant before you bought the land?

A. No, sir; I never saw the grant; Francisco Hernandez y Fajarnes, a person of my confidence, was relied upon to look after that part of it.

Q. What grant is that you have just referred to?

A. The grant by the Government to the Camps family. The land was not worth more than two or three thousand dollars, but the grant was worth the thirty two thousand pesos I paid for it.

Q. You said that you took possession of the land you bought? Of what portion of the land did you take possession?

A. I understand that when I took possession, that included all the land represented by the grant; of that I took possession.

Q. Did you measure the land of which you took possession?

A. No, sir.

Q. By what means did you take possession; by what means did you say that you took possession.

A. By the delivery of the documents to me, I took possession.

Q. Besides the possession which you claim by the deliver- of the documents, you never took actual possession of the land?

A. No, sir.

Q. So that part of that land was covered by the water?

A. Yes, sir.

Q. Before you bought the land, before the negotiations for the purchase of the same were closed, did you notice that the
70 greater part of the land here in question was under water?

A. It was under the water at high tide, but not so at low tide.

Q. What do you mean by low tide?

A. At low tide the land is dry, if it is filled in.

Q. Did you inform yourself well as to the nature and conditions of the grant in question?

A. Yes, sir; I went further and sought the opinion of the authorities at that time, civil, military, as well as marine, and all of them, without exception, told me that the grant was a perpetual grant and was perfect.

Q. Is there any record of that opinion?

A. No, sir. I secured it verbally.

Q. The building on the map marked as of Castle Brothers, please look at the map, buildings marked "A" and "B"; did that building exist at that time, that is to say, did it exist then?

A. The building marked with letter "A" already existed but the one marked letter "B" did not; I think they constructed it.

Q. The building marked letter "A", which already existed upon the land, as you say, when you took possession of the same, was it a two story building, as at present.

A. Single story behind and a floor above, and the water at high tide then reached to the foundations.

Q. What other buildings did you find upon the land?

A. Nipa shacks, portable structures.

Q. Did you find any buildings occupied by industries?

A. None.

Q. Do you know whether any buildings have been constructed upon that land for that purpose?

71 A. I am unable to tell you, I paid no further attention to that.

Q. That portion of the land which you have described as filled-in at that time, was it smaller than the portion at present filled in?

A. Much smaller.

Q. It was smaller when you bought it?

A. Yes; it was smaller than at present.

Q. How was the increase brought about?

A. With ballast that was deposited there from time to time under an agreement with Juan Rodriguez, who was engaged in that business and when he had any excess, he deposited it on my land, and I paid him for it.

Q. You mean to say that the land was filled in by you?

A. Yes, sir.

Q. You also stated here that those living along the seashore in nipa shacks had also filled in a part of the land?

A. That's it; whatever they did in one way or other, always meant something, and when there were enough houses in front, the others were built behind.

Q. Those living along the land filled in, in the nipa shacks, built those shacks on the beach, as you said?

A. Many of them built their houses in the swamps and at high tide the water came up under their houses.

Q. You mean to say that they built their houses upon the sand which was covered by the sea at high tide?

A. Yes, sir.

72 Q. Do you know the location of the land in question, as it now stands?

A. Very little, because I have not seen it for many years.

Q. That portion of the land never covered by the water; what is it used for, do you know?

A. Houses, buildings, coal yards, and warehouses, I think.

Q. Do you mean to say houses, buildings, coal yards, all of private use, of private individuals?

A. I presume they belong to the present owner of the land.

Q. Do you know whether there is any building on the dry land, occupied by a manufactuory?

A. I don't know.

Q. Or by some industry of general utility?

A. I don't know.

Q. You mean to say that all of the dry land is now simply producting rent for the possessor?

A. I don't know; at present I don't know the exact condition of affairs in regard to that; have no information.

Mr. PALMA: I object because the witness is ignorant of those things.

The COURT: Let the question be stricken out.

Examination of ARCADIO ARELLANO:

Being duly sworn, he testified as follows: I am thirty years of age, married, an architect by profession, residing at 28 Calle Concepción, Quiapo.

By Mr. PALMA:

Q. How long have you been an architect?

A. Since 1885.

Q. Have you a professional license as such?

A. Yes, sir.

73 Q. Where did you study in order t oget such license.

A. In the School of Arts and Trades of the Spanish Government.

Q. Is it you who surveyed the land here in question?

A. Yes, sir.

Q. How did you make the survey of the land?

A. By first describing the premises where I went several times in order to ascertain the boundaries of the land in accordance with instructions of the land registration court, and in connection with the preparation of the map.

Q. When you surveyed the land, did you find any traces of the boundaries of the same?

A. Yes, sir.

Q. Please state to the Court what those traces were which in your judgment marked the boundaries of the land?

A. (Explaining on the map before him.) At low tide it is bounded by the marshes caused by the sea; at high tide a breakwater, which can be distinctly seen on sides "D" "E" and "E" "F"; at low tide a person can walk to this breakwater without wetting his shoes; the breakwater is well settled on account of the gravitation of the stone.

Q. And you have seen what you say on different parts of the land?

A. Yes, sir.

Q. Is that also marked on the map?

A. On the side "AF" the land is bounded by a stone-wall belonging to the Civil Government; on the side of the Murallon the land
74 is bounded by the saw mill there, and on the side "BE" by a stone jetty.

Q. But that breakwater on the map is not, in your judgment, a natural one, but of human construction?

A. Yes, sir.

Q. When you surveyed the land, was it at low or high tide?

A. At low tide.

Q. And could you walk the whole length and breadth of the land?

A. Yes; on the side of the breakwater, so much so that I was able to place my instruments there.

Q. As to that portion of the land covered by the sea at high tide; do you think that it was ever filled in with garbage or other material?

A. I think so.

Q. Upon what do you base your opinion?

A. I judge by the work done on the high part of the land and by the marshes shown on the map.

Q. Is there any difference in the nature of the foundation of the land bounded by the breakwater and the ordinary foundation of the land covered by the sea?

A. Yes, sir; there was a great difference in level.

Mr. PALMA: That is all.

By Mr. REYES:

Q. When you surveyed the land in question, what data did you have to guide yourself by?

A. By what was pointed out to me on the land.

Q. Who pointed it out to you?

A. Joaquin Salvador.

75 Q. Do you mean to say that you took the boundaries pointed out to you by Mr. Jover y Costas in order to determine the metes and bounds of the land described in the map?

A. Not only what he pointed out to me, but also the traces of boundaries on the land.

Q. Are those traces or signs so well-fixed and clear that the true limits can be ascertained as shown on the map?

A. Yes, sir, and I can demonstrate it at low tide.

Q. Can you show the exact line?

A. Yes, sir.

Q. What signs did you find there?

A. I posted stakes about a meter long, which must be there now, unless they have been taken away.

Q. So that you posted stakes there but you found none?

A. No, sir.

Q. And the line drawn by you; how long was it?

A. The breakwater, consisting of stones piled together on the low part of the land.

Q. What was the width of that stone-pile?

A. It was built of China stone and it was some four meters wide.

Q. How could you then get a fixed line out of that stone pile four meters wide?

A. By following the front line; the seaward line.

Q. How many meters did you follow in order to say that the front line is perfect?

A. I simply measured it and put the result on the map.

Q. The map shows 336 and 80 one-hundredths; how did you get that figure?

A. Upon the land itself.

76 Q. What signs did you find upon the land to arrive at that result?

A. Point marked "A" is indicated by the stonewall of the adjoining land; point marked "B" is also indicated by a stone construction which we call *muelle*, almost on a level with the embankment; then comes the marsh land, which is outside of the limits of the Polygon.

Q. That's all right, but upon what do you base your statement that point marked "A" is the boundary of the adjoining land or that of the land in question; how do you know that the adjoining land is a separate tract of land and not part of the land which you surveyed?

A. Will you please explain your question?

Q. How do you know that that was the boundary on this side; who told you that?

A. Mr. Salvador; but aside from what I have said, I took that as the boundary found by me upon the land; in the first place because it was pointed out to me by Joaquin Salvador, and secondly because I had known the land since I was in the Assessor's Department, for I also surveyed that land for the purpose of assessment in order to verify the declaration made by the owner.

Q. Did you verify the measurements here given by you of 336.80 meters, by means of some document, or written survey?

A. By means of some document, no, sir.

Q. When Joaquin Jover y Costas furnished you with the information upon which you acted in the survey of the land, did he do so verbally?

77 A. No, sir.

Q. How then?

A. By pointing out to me on the land.

Q. Did he show you any document at all?

A. No, sir.

Q. By pointing out to you on the land, that is to say, by showing you one end of the land and so on.

A. He could not point out to me the boundary on the sea side because it was high tide when we went there, but I noticed the spray which indicated to me that it was rocky there and shallow, and I found later, at low tide, that it was the break water.

Q. Did Joaquin Jover y Costas ask you to ascertain the boundaries of the land?

A. No, sir.

Q. What did he ask you to do then?

A. To survey the land.

Q. What land?

A. The land he indicated to me.

Q. How did he indicate to you the northern part of this land?

A. It was high tide and he pointed out what we could see.

Q. Then he pointed out to you on the water of the ocean?

A. Yes, sir.

Q. What did he point out to you?

A. The spray of the water indicated that there were shallow places.

Q. You did not employ any other means of ascertaining

78 those boundaries.

A. No, sir.

Q. For instance, you did not take a boat and go out to ascertain those boundaries?

A. No, sir.

Q. Here, on the east side of the map, you show a line of 138.85 meters?

A. Yes, sir.

Q. When Joaquin Jover y Costas pointed out to you this boundary of the land, did he give you that measurement of 138.85?

A. No, sir.

Q. How did you get that?

A. From the breakwater itself, by including it within the polygon.

Q. This is the length of the side marked "DCE", is it not?

A. Yes, sir.

Q. Did you measure the whole length, or simply from the side marked "DE"?

A. "DE" only.

Q. At the point marked "E" on the map; did you find any sign when you posted the stake there?

A. Yes, sir; that is the intersection of the breakwater?

Q. Was the intersection at that point where the stake is?

A. The intersection of two lines is an imaginary point.

Q. Do you mean to say that the point marked by you is simply imaginary?

79 A. Upon the breakwater; yes, sir.

Q. How far does the breakwater reach; please indicate on the map.

A. (Indicating on the map.) To a point on the line "EF" starting from point "E".

Q. Is that point indicated on the map?

A. Yes, sir; by the breakwater line.

Q. How is it marked?

A. By the gravel mark on the line "EF".

Q. Did you measure and mark this point as on land?

A. Yes, sir.

Q. Do you consider as land a part of the sea covered by water at high tide?

A. Yes, as marsh land.

Q. What do you mean by marsh land?

A. That which is covered by the sea at high tide.

Q. Please explain to the Court what you mean by marsh land?

A. It means low muddy land covered by the waters of the sea at high tide.

Q. What is the nature of the bottom of the land.

A. It is muddy and swampy.

Q. What is under the water there?

A. Mud.

Q. What kind of mud? Is it a mixture of stone, sand or dirt?

A. It is dirt, detritus of organic matter.

Q. What is the difference between the land covered by high water and the bottom of the sea?

80 A. The difference is that this land is swampy and muddy, whereas the bottom of the sea is sandy.

Q. So that this land, so-called by you, although covered by the sea in your opinion can not be confused with the sea?

A. No, sir.

Q. Couldn't you call the bottom of the sea land, too, since it may become dry and be no longer covered by the sea?

A. Yes, if it is no longer covered by the sea.

Q. That part of the Luneta not covered by the sea; do you call that land?

A. No, sir; because it is sand.

Q. Do you know what the beach is?

A. Yes; where the sea stops.

Q. And don't the sea stop here?

A. At high tide, yes.

Q. Notwithstanding that, is it or is it not the beach?

A. No, sir. Because the land in question is limited by what I believe to be the possible boundaries of the same.

Q. Ah! You think it isn't the beach because it is possessed by a private party?

A. Yes, sir.

Q. You mean to say that if the beach on the Luneta was possessed by a private individual it would cease to be a beach?

A. I don't think it can lose it- generic name.

Q. When you went to survey the land with Joaquin Jover y Costas, you said that it was covered with water?

A. Yes, sir.

81 Q. Have you seen any craft there?

A. None whatever.

Q. Have you seen any landing places on the shore?

A. No, sir.

Q. Didn't you see any person there engaged in fishing whose craft were beached on the shore?

A. I have seen women fishing in the marshes.

Q. Do they have any boats?

A. No, sir.

Q. At low tide on that part of the land now and then covered by the sea, could you go on foot?

A. Yes, sir.

Q. On any part of the land?

A. No, sir, on the side of the breakwater.

Mr. REYES: That is all.

By the COURT:

Q. With the exception of that part of the land facing the embankment, can a person walk all around the land at low tide?

A. Up to about one-half of this side (indicating on the map) starting from point marked "B," half way up the line "FE," and from point "A" two-thirds up the line ending at point "F."

Q. And what is there on that part where you can not go on foot that can be considered as the boundary line between the land surveyed by you and the waters of the sea?

82 A. Nothing except the prolongation of that part to which access could be had, which I used in order to fix point "F."

Q. Then you mean to say that point "F" was not indicated on the land?

A. No, sir; it was not.

Q. And how did you get that longitude of 120 meters in order to fix the northern boundary of the land from point "A" to point "F?"

A. From the intersection of the two visuals, taken from point "E" to point "F" and From point "A" to point "F."

Q. What system of these known in topography did you employ in the preparation of this map?

A. Circle and intersection.

Q. And what have you taken into consideration in order to fix the point marked "F" by looking from the point marked "E"?

A. The parallelism of the line with the front line.

Q. You mean to say that line "EF" is parallel to line "BA"?

A. Yes, sir.

Q. And with reference to line "AF"?

A. That is the prolongation of the wall.

Q. And the breakwater is between points "B" and "E"?

A. The landing place marked "BCDE," the breakwater commencing at point "E."

Q. And why did you not consider line "DE" as a prolongation of lines "C" and "E" and why have you prolonged the wall from point "A" to point "F"?

A. To prevent the polygon from going outside or beyond the breakwater.

83 Q. How long do you reckon the breakwater through which line "DE" and part of line "EF" pass has been there?

A. I think for more than fifteen years, for it is well settled into the mud.

Q. Is that breakwater covered by the high tide?

A. Yes, sir. Entirely.

The COURT: That is all.

Examination by Mr. REYES:

Q. When you measure land adjoining the sea, what do you take to be the sea-line?

A. When there are no marks upon the land, I ordinarily follow the boundaries given in the title deed.

Q. Then you don't follow the tide-marks?

A. No, sir.

Q. If a title deed is presented to you showing that the boundary of the land is in the middle of the bay, you take it for granted that the land reaches to that point?

A. If the deeds say so, yes, sir.

Q. You pay no attention to the sea-line?

A. Yes, sir. I also show it on the map as in this case.

Q. But here on this map you have only marked the low tide line?

A. No, sir; here is also marked the medium tide line; the low tide mark is that of Manila Bay; the medium tide line is that indicated by the breakwater, and the high tide line is the one shown on the first place on the map.

84 Q. You mean to say that if you were asked to survey the sea-water line at some particular place, you would govern yourself in so doing by title deeds and not by the natural water line?

A. That depends on the circumstances of each particular case.

Mr. REYES: That is all.

Examination of FELIX FANLO:

Who being duly sworn testified that he was fifty years of age, married, a merchant residing at number 41 Urbiztondo, Manila.

By Mr. PALMA:

Q. Do you know the land here in question?

A. Yes, sir.

Q. Who owns it?

A. The firm of Soler is in charge of it.

Q. Do you live on any part of that land?

A. I hold a lease of part of the land.

Q. What part is leased by you? Could you identify it if you were shown a map of the premises?

A. Yes, sir.

Mr. PALMA: (Showing the map to the witness.)

A. I occupy that part between the lighthouse and the low tide mark, and that part behind the coal yard down to the boundary of the land. I have occupied this land as a tenant for about six years, commencing on the bank of the estero; all that part periodically covered by the tide, we rent, and we had thereon houses and warehouses.

85 Q. How long have you known that land?

A. For over six years.

Q. That is, since you have occupied the land as a tenant?

A. Yes, sir. Santiago Dominguez and Carmen were formerly in possession, Rocha being the present occupant.

Q. Are you one of the members of the firm of Rocha & Company?

A. Yes, sir.

Q. Do you know whether at any time boats or other craft occasionally go upon that part used by you, and whether such boats or craft are beached thereon?

A. With our permission, yes; and this only in some exceptional cases.

Q. Did you use to charge them for that?

A. Yes, sir. We leased it for our own use and if any other boats are allowed in there, they have to pay.

Q. How long has this been your practice?

A. From the beginning.

Q. Have you continued that practice up to the present time?

A. Yes, sir.

Q. Do you know whether your predecessors did the same?

A. Yes, sir.

Q. How do you know it?

A. Because I have been a member of all those three firms, of which I was manager, and this was a matter particularly under my control; we owned some houses and buildings thereon which were burned, with all the goods stored in them, in a fire
86 which took place on Good Friday. At the time of the equinox the water covers the land and the sea comes right up to the landing.

Q. You mean to say that you have notified those having boats that you are the manager and have collected fees from them?

A. Yes, sir. They were permitted to come upon the premises, and the boats are there repaired under contract.

Mr. PALMA: That is all.

By Mr. MORAN:

Q. Do you know for what object the land now filled is used?

A. Yes; as a coal yard. There are also buildings occupied by Castle Brothers, and then there is another coal yard.

By Mr. REYES:

Q. The land rented by you, indicated here on the map with the name of Carmen & Company, adjoins the sea?

A. Yes, sir; it does.

Q. How many meters are included therein?

A. I can not say.

Q. Approximately; I mean how many meters long and how many deep?

A. I think it is about four hundred square yards, beginning at the landing; I don't remember exactly.

Q. How long is it in front; I mean on the side of the landing?

A. I think about 12 or 14 meters.

Q. And how deep?

A. All that the sea allows; that is to say, we use all that the sea permits; at low tide small craft are beached there, so there is no limit to it except as far as the sea permits.

87 Q. Between the point where the sea reaches and the nearby landing, how much land is there over which you could walk?

A. It is impossible to walk around there because it is very filthy. You can walk around probably for about forty or fifty meters, but beyond that there are places where you get stuck up to your knees, because the sea brings too much refuse to the shore and the land around there is very soft.

Q. These buildings marked on the map with the name of José Lim, do they belong to you?

A. No, sir.

Q. Of the buildings on the map, will you please state which are yours?

A. A warehouse with galvanized iron roof, and a small frame house.

Q. Is that the house marked on the map as of 30.80?

A. We have two buildings; a small frame house and a small warehouse some six or seven yards long by two and one half wide; and the small house must be about four square yards, the rest are all coal yards.

Q. Those buildings and coal yards, do they adjoin the sea?

A. The sea only reaches them during the equinox, because the land has been considerably raised.

Q. How far in does the sea reach?

A. At high tide, within 18 or 20 feet of the buildings.

Mr. REYES: All right.

88 Examination of JOAQUIN SALVADOR:

Who being first duly sworn, testified as follows:

By Mr. PALMA:

Q. Are you the present attorney in fact of the owner of the land sought to be registered?

A. Yes, sir.

Q. How long have you been such agent?
A. Some eight years.
Q. Have you been in charge of this land all of that time?
A. Yes, sir.
Q. Please look at the map and state whether the buildings thereon pay any rent for the use and occupation of the land?
A. (Looking at map:) The buildings "A" and "B", occupied by Castle Brothers, pay rent for all of the land covered by them, including that part for the occupation of which they paid; the adjoining building, occupied by the Chinaman, also pays rent. The other buildings marked on the plan have been put up by the owners of the coal yard for the use of the watchmen whom they have there, the same as that of Messrs. Carmen, which are all very small, but pay rent for the land they occupy.
Q. When did you take possession of the land?
A. Some eight years ago, as the agent of Mr. Soler. This being one of the matters under the control of the firm, I as the manager of the firm looked after everything concerning this land.
89 Q. Who turned over the control of this land to you?
A. Mr. Soler, who gave me a power of attorney.
Q. When you took possession of the land, did you know what the area of it was?
A. Yes, sir; from the deeds and documents which passed through my hands.
Q. You are the one who asked Mr. Arellano to survey this land?
A. Yes, sir.
Q. What sort of information did you give him?
A. Whatever I could gather from the grant and from the conveyance to Juan Soler; and from what I had read I knew that the boundaries should be ascertained by starting from the Canal of Vitas to the lighthouse, and then on a straight line of two hundred yards to the sea; and Mr. Arellano prepared the map and surveyed the land in accordance with the information thus furnished him.
Q. Did you do anything in the way of filling in the whole or part of that land?
A. When Mr. Vidal ceased to be the agent, the land was turned over to Baragan, and by the latter to Soler. The owner of the land was always advised to proceed with the filling of the land, beginning at the breakwater. It took several years to accomplish this because the owner was not in a position to invest a large amount of money at one time. Some two years ago Carlos Las Heras was employed to do certain work, but we never succeeded in getting the owner's
90 authority to go ahead with it. However it was always our idea to fill in the land, and when the land was occupied by nipa shacks, we decided to require the tenants to fill it in gradually. We were then paying the assessed tax of one dollar, gold, per square meter. The rent was not sufficient even to cover the interest on the money and that is the reason why we desired to fill it in so that we could get something out of it.
Q. During the period of your administration, were you known as the man in charge of the land?
A. Yes, sir.

Q. Was the land acknowledged to be private property?
A. Yes, sir.
Q. Why?
A. At the time of American occupation, I ousted the people who lived there in the warehouses in order to lease the same to other parties, and I had no trouble at all in so doing.

By Mr. REYES:

Q. You said that you asked the Municipal Board for permission to fill in a part of the land?
A. Yes, sir.
Q. I am going to show you a letter and want you to tell me whether it was in that letter that you applied for such permission?
A. Yes, sir.

Q. Why did you apply to the Municipal Board for that
91 permission?

A. Because I thought that the Board was the proper authority. The Engineer who made the map told me that I should secure that permit from the Board.
Q. Did he say to you why?
A. I don't remember exactly, but I think it was a work like many others.
Q. You said that you are in possession of the land shown on the map?
A. Yes, sir.
Q. How have you enforced that possession as to the part of the land covered by the sea?
A. I think I enforced that possession by not allowing any boats whatever to be beached on that part of the land without paying something therefore, either to Mr. Carmen or to myself. I mean to say that if any boat was ever beached and repaired on that part of the land to which you refer, the owner had to pay so much. Mr. Carmen and Mr. Fanlo were the ones to claim that the lands were private property and that the owners of the boats should pay rent. On the oth-r hand, all of the nipa shacks there also paid rent.
Q. Then, you did not enforce that possession by walking around that part covered by the sea?
A. I only put my feet upon the land when the last map was made. I walked around there and stopped at point "E", where the apparatus was placed. At high tide I have been around there in a banca in order to have a better idea of the work which I desired to see.

92 Q. How far from the buildings indicated on the map can, at any time, anchor those boats and craft which you said paid you so much for anchoring there?

A. At low tide, such boats and craft can not come within the limits of the land as shown on the map. At high tide, they may advance more or less, for instance, the cascos can come back of Mr. Carmen's house, which indicates that the marsh extends to that place.

Q. You say that these black spots on the map back of Carmen & Company indicate dry land?

A. Yes, sir. Between these points and the Malecon, or embankment, and the rest is covered by the water at high tide. The same thing happens at other places where the sea washes over the embankment or Malecon.

Q. What is that part you say is dry, used for?

A. Most of it, all that shown on the map, is occupied by coal yards, except the warehouses of Castle Brothers, which are used for the storage of merchandise imported by them. That part back of Castle Brothers was filled in only a short time ago by Mr. Castle, himself. They asked me for permission to do so at their own expense, and they have paid rent for the use of that land.

Q. What use?

A. To enlarge their business; that is their import business. They wanted to build sheds, as, for instance, the shed back of "AB", which was built at their own expense, the other sheds being used for their horses and wagons. As there was no more land available, they filled in some in order to enlarge their business. The buildings
93 shown on the map as belonging to Castle Brothers, are marked, I believe, letters "A" and "B."

Q. Have both of them the same shape?

A. They are both frame buildings, apparently of two floors, that is to say, that although they appear to have two floors, nevertheless they are warehouses of only one floor.

Q. Between the ground floor and the roof of the buildings, is there another floor?

A. No, sir. They are simply warehouses, one higher than the other.

Q. Is there any other building besides those mentioned by you, upon that land, devoted to other purposes?

A. No, sir.

Q. Is there any building upon that land used for the purpose of art?

A. No, sir.

Q. Is there a rope-rigging manufactury upon that land?

A. Neither.

Q. Is there a blacksmith shop or a foundry there?

A. No, sir.

Q. Do you mean to say that that land is used only for the purpose of producing rents for the owner?

A. Yes, sir. Like any other property.

By the COURT:

Q. In reply to a question by your attorney, you stated that in the survey of the land and preparation of the map, you had taken into consideration, among other things, the measurements shown in the conveyances?

94 A. Yes sir.

Q. Do you remember what those measurements were?

A. I remember the boundaries given therein, but I don't remem-

ber the measurements. The grant speaks of yards, whereas, in the conveyance *brazas* spoken of.

Q. But they are the same because the *brazas* (fathoms) have been reduced to yards?

A. If the grant says that the boundaries of the land are the Canal de Vitas and the *farola* or lighthouse, it is very easy to draw a square.

Q. Do you know whether the boundary of the land marked "EO" corresponds with the measurement given in the conveyance?

A. I think so.

Q. The deeds only show a width of two hundred yards, whereas the width of the land both on the "E" and on the "O" boundary is one hundred and ninety meters?

A. I remember now that when the map was being made, Mr. Arellano told me that he had been instructed to make the map of the land as he found it. He having noticed this breakwater, which starts at the intersection of the lines of an angle, we took it as a starting point, in order to make the map, and even though the conveyance could not give the exact area of the land, yet we have two points "BA", that is to say the canal de Vitas and the lighthouse.

Q. When you took possession of the land, was the breakwater there?

A. At low tide I always saw that breakwater after I had taken possession of the land.

Q. Have you any information, as attorney-in-fact for
95 Joaquin Jover y Costas, as to the time the breakwater has been there?

A. I think, judging from the conveyance that Mr. Vidal bought the property from the deceased Camps, who sold it to Juan Jover. Mr. Camps commenced to build that breakwater in order to fix the boundary of his land. As he was compelled to sell the land, he was unable to finish the filling-in of the same. The building of the breakwater was continued by Mr. Vidal, and I presume the breakwater must be some thirty years old.

By the COURT: That is all.

Testimony of DAMASO FLORES:

Who being first duly sworn, testified that he was forty-five years of age, married, a bill-collector, residing at number 35 Plaza Santa Ana, Quiapo.

By Mr. PALMA:

Q. For whom are you a bill collector?

A. Formerly for Mr. Vidal, and afterwards for these gentlemen (Referring to the petitioner's agent).

Q. When were you bill collector for Mr. Vidal?

A. From 1881 to the present time.

Q. Have you collected any rent for a tract of land on the Malecon or embankment?

A. Yes, sir.

Q. From whom did you collect the rent?

A. The various persons from whom I now collect rent, such as Smith, Bell, Warner, Barnes, etc.

Q. Since 1881, you have been collecting rent for that land, have you?

A. Yes, sir.

96 Q. Whom do you collect rent from now?

A. From the Compañia Maritima, Smith-Bell, Francisco Reyes, Carmen & Co., Mr. Aguado, and the Chinaman Ontieng-Sing.

Q. Do they all pay their rent promptly?

A. Yes, sir.

Q. Has any of them refused to pay rent for the land?

A. No, sir.

By Mr. REYES:

Q. Have you any other employment?

A. Yes, sir. I am also bill collector for the Filipino Bazar.

Q. Are you not a clerk in that store?

A. Yes, sir. I am the bill collector.

Q. Are you not a salaried clerk of that store?

A. Yes; I work in the afternoon.

Q. What are your duties there?

A. If I have the time and there are customers, I sell to them? Otherwise I rest.

Q. How about in the morning?

A. I go out to collect the bills.

Q. And besides that, you also collect bills for other firms, don't you.

A. Yes, sir. On the Malecon del Norte only.

Q. Where do you collect your bills from these people on the Malecon del Norte.

A. In their own offices.

97 Q. Where is the office?

A. The Compañia Maritima has its office on the Muelle de la Reina.

Q. Do you make collections from other people on that Muelle de la Reina?

A. No, sir.

By the COURT: The trial of this case is continued to the ninth instant at 11 o'clock, A. M.

Then follows petitioner's exhibit "D," consisting of 20 sheets of paper, sewn together, labeled as follows:

"Rents from the Murallon Property"

"No. I.

and showng the names of the various tenants, the portion of land occupied by each of them, the rents paid, how the property is occupied, for how long leased, and the rent per square yard; covering the

months of September, October, November, and December, 1877; the entire years of 1878 and 1879, and January to August, inclusive, 1880.

Then follows petitioner's exhibit "E", consisting of 17 sheets of paper, sewn together, labeled as follows:

"Rents from the Murallon Property"

"No. II."

containing the same data for the months of September, October, November and December, 1880, and the entire years of 1881 and 1882, and the months of January, February, March, April and June, 1883.

98 Then follows petitioner's exhibit "F", which is similar to exhibits "D" and "E", marked "No. 3," for the months of May to December, inclusive, 1883, January to December, inclusive, 1884, and January to August, inclusive, 1885.

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Record No. 337.

In the Matter of the Petition of JUAN JOVER Y COSTAS.

At a session held by the Court in the City of Manila, May 9th, 1904, at 10 o'clock, A. M. the trial and hearing of the above entitled case was resumed:

Mr. R. Palma, appeared as counsel for petitioner.

Mr. M. Reyes, in behalf of the Acting Attorney-General, and Mr. A. P. Moran, as Attorney for the City of Manila.

Mr. Palma offered to the Court the testimony of the following witness:

Testimony of Enrique Rodriguez.

Who having been first duly sworn, testified that he was fifty-six years of age, married, and a merchant residing at 420 Rotonda, Sampoloc.

By Mr. PALMA:

Q. How long have you been in the Philippines?

A. Thirty-five years, this is my thirty-sixth year.

Q. Have you known, during that time, a man named Camps, as the owner of a certain tract of land on the Malecon, near the light house?

99 A. Yes, sir. I have known him.

Q. When did you know him?

A. For a long time. I knew him only in a business way.

Q. What business transactions did you have with him at that time?

A. I used to sell him ballast to fill in the land near the lighthouse, which still exists.

Q. Do you know the land owned by him?

A. Yes, sir.

Q. Do you know who owns that land at present?

A. I think that the owner is a man who lives in Barcelona, whose name I don't remember, but his agent here is Mr. Soler.

Mr. MORAN: I object to the question because a person can not testify whether some other person is the owner of a given piece of land.

Mr. PALMA: My question tends to demonstrate the identity of the land in question, but not the title to the same.

Q. Where is that land situated?

A. Near the lighthouse, on the Malecon del Norte.

Q. At the time of your transactions with Mr. Camps, what was the condition of that land?

A. A great part of the land had been filled in. That gentleman died afterwards and was succeeded by his son. That is why I say that I knew him as the owner of the land. The father claimed to be the owner. When he died, his son succeeded him, and continued to fill in the land. Sometime afterwards, I met Mr. Camps, Junior, and this gentleman from Barcelona. I am also acquainted with Mr. Vidal to whom I used to sell ballast to fill in the land.

Q. Do you mean to say that in Mr. Camps' time you used
100 to furnish the ballast to fill in the land?

A. Yes, sir.

Q. For how long did you furnish ballast for that purpose?

A. I can not say exactly, but for a long time.

Q. Did you happen to know a person named Vidal?

A. Yes, sir.

Q. When did you know him?

A. Many years ago.

Q. How did you happen to know him?

A. I knew him at the agent of the owner of the land, or as the owner.

Q. During Mr. Vidal's time did you continue to furnish ballast for the filling-in of the land?

A. Mr. Vidal was the person who paid my bills.

Q. How did you furnish that ballast?

A. By means of boats or cascos.

Q. Where did you take those cascos or boats?

A. Why I took them in front of the dock at the mouth of the river, and men would take the ballast in baskets and carry it on the land.

Q. Under whose direction, did the men do that?

A. Under my directions.

Q. Was there any sign or mark upon the land in question by which the boundaries could have been ascertained at that time?

A. Yes, because before Mr. Vidal's time a line of stones piled one upon the other was built for the purpose of marking the boundary of the land. This stone wall must still be visible at the out-
101 side limit of the land, which he claimed to be his, and said that he was going to fill it in to that place; but, after that, they ceased to buy any more ballast from me, and I don't know if they bought from any one else.

Q. How long did you furnish ballast for filling in the land?

A. I think that some four or five years before the American occupation of Manila.

Mr. PALMA: That is all.

By Mr. REYES:

Q. Did you accompany the persons who first deposited ballast upon the ground?

A. This ballast came from the boats arriving from abroad. I took charge of unloading these ships, and then contracted with the agents for the sale of the ball-st to be deposited upon the land. After the contract was closed the ballast was unloaded from the ships and deposited on the land, and all I had to do was to give orders to such-and-such a boat and the ballast was unloaded.

Q. Then you never saw the ballast actually placed on the land?

A. Why, certainly I did. I had to see from time to time whether the men worked or not.

Q. The first ballast sold by you, did you see where it was deposited?

A. Yes, sir.

Q. How far from the Malecon was the first ballast deposited?

102 A. At a very short distance; on a level with the dock, on the other side of the dock, indiscriminately.

Q. You mean to say that when the first ballast was deposited there, the land was not on a level with the docks?

A. There was no dock then as it exists to-day; it was a dock built of Guadalupe stone and the ballast was used to raise the land to the level of the dock and make it all even. I know that a large amount of ballast was used from my ships; a line of stones piled one on top of another was first layed to mark the boundary and then the land was filled in with ballast.

Q. You mean to say that the land now occupied by buildings was filled in with the ballast furnished by you?

A. Yes, only by me.

Q. But before you sold the ballast no part of the land was on the same level with the dock?

A. Yes; there was. That's what the ballast was for.

Q. When you sold the first ballast was any part of the land on a level with the dock?

A. No, sir.

Q. About what year did you for the first time sell that ballast?
A. I can not say exactly.
Q. About what time?
A. At least ten years prior to American occupation of Manila. A large portion of the land has been filled in and very little now remains to be filled.
Q. Before you first deposited ballast on that land were you shown the space where you were to put the same?
A. Most assuredly so.
103 Q. Do you remember about where that space commenced and where it ended?
A. The space, of course I do. It was between that sort of rivulet running under the so-called Hiede Bridge and a place near where the small house built by the Department of Harbor Improvements is.
Q. You said some ten years prior to American occupation, in 1898, that is to say 15 years ago?
A. Yes, sir.
Q. The first ballast you sold was it placed upon the land there?
A. It was deposited on that part of the land some what rocky. There were some lime stones there brought by the boats when I commenced to fill in the land.
Q. Upon what then was the ballast deposited?
A. It was deposited on another place filled with stones and rubbish.
Q. Only at that place. And on the sand, too?
A. Part of the ballast was deposited in the middle of the land. After laying the straight line, the boundary line, the space was gradually filled in towards the center.
Q. What did the ballast consist of?
A. On sand and lime stone. The ships coming here to load hemp ordinarily brought some seven or eight hundred tons of ballast; we arranged for the unloading of the same and then sold it to Mr. Vidal or Mr. Camps and it was deposited on the land in the manner already stated.
Q. Prior to the first ballast you sold some 15 years ago, did you sell any ballast?
A. Yes, to other people, yes.
104 Q. You mean to say then that you sold that ballast some fifteen or sixteen years ago, but can not state definitely how long ago?
A. Yes, sir.
Q. You sold the first ballast to Mr. Camps.
A. To Mr. Camps, Jr., and to Mr. Vidal; the ballast sold to Mr. Camps' father was sold by my father-in-law who may rest in peace.
Q. At the time you deposited the first ballast sold, how wide a strip of dry land was there along the embankment?
A. I guess that all the land including that part completely filled in was about one hundred meters long.
Q. How wide?

A. I guess about one hundred meters wide by two hundred long; I can not say exactly.

Q. You mean land not covered by water?

A. The water also covers the present embankment at times. The water sometimes covers the land; the coal deposited there now you can see covered by the sea at high tide.

Q. You mean to say that the sea covers all that land at times?

A. Yes, all of the coal yards as far as the Malecon del Sur and sometimes farther; don't you see in removing the coal they dig holes in the ground with the spades?

Mr. REYES: That is all.

Mr. Palma, counsel for petitioner then rested his case, waiving on his part the ocular inspection, in view of the fact that the attorneys for the other side had refused to introduce their evidence before the inspection as he, Mr. Palma, desired. The Court
105 then granted the motion of counsel for the Insular Government and the City of Manila that they be permitted to present their evidence after the ocular inspection at first suggested and later waived by Mr. Palma, and ordered that the Insular Government and the City present their evidence after the original grant by the Spanish Government to petitioner, is filed.

EXHIBIT "G."

Don Jose Luis de Baura y Soriano, lawyer of this royal court of chancery, knight of the Military Order of San Juan of Jerusalem; member of the Royal Economical Society of "Friends of the Country", member of the general commission of statistics; and secretary of the superior civil government of these Islands, etc.

I certify that on the petition filed by Don Jose Camps, of-icial primero jubilado of this office, in which petition he asks for the concession of a piece of land 200 brazas long and 100 brazas wide, in the lowland back of the northern wharf (*Muralloa del Norte*) of the Pasig River, the superior decree, hereinafter set forth, was issued on February 12, 1859:

"Acting upon the petition in which Don Jose Camps on November 17, 1858, solicited a grant for the land which he fills in at his expense on the lowlands situated along the northern wharf (*Muralloa del Norte*) and on the north side thereof, on the right side of the mouth of the Pasig River with an extension of 200 brazas in length and 100 brazas in width, beginning at a distance of 25 varas (Spanish yards) west of the bridge built on said wharf for the connection of the waters of the river and of the bay from the Beach of
106 Binondo, as appears on the plan hereto attached, to which land, after it has filled in, he intends to move his artistic establishment called 'Camps é Hijos,' and a manufactory of hemp rope; in view of the report made on the 26th of the said month of November by the *Alcalde Mayor* 1.° of Manila, who, after consultation with the director of public works of the province, is of the

opinion that the waste land asked for should be granted to Camps, said land being at present covered by the sea, and being far from the houses situated on the Binondo beach, it is very suitable for purposes of maritime commerce and it is convenient for the purpose of public adornment, that the foundary, ironworking and scientific instrument establishment of Camps é Hijos be located on that place, provided that the said Camps shall agree not to erect such buildings with brick and stone or strong materials, for the reason that the same is outside of the military lines; in view of the report made on December 17, 1858, by the Commanding General of Marine, in agreement with the captain of the port regarding the convenience of such concession for the merchant marine and public adornment, but with the precise condition that Camps shall leave a distance of 16½ *varas* between the outside edge of the wharf and the intended building, which width is the one fixed for wharves; in view also of the report of the subinspector of engineers, with the approval of the Commander of the post, proposing that the concession asked for shall not be granted for a building of strong materials, on account of the forts of the place, and that the building to be erected shall consist of only one story, and shall be removed at the expense of its owner, at the discretion of the superior authority of the Islands, when the public interests so require, taking into consideration the
107 circumstances and official and industrial merits of the said Don Jose Camps, and the offer of protection stated in the decree dated November 4, 1858, when refusing the sale, asked for by him, of an irregular piece of land adjoining the new *Cuartel del Carenero*, and in conformity with the above-mentioned reports of the commanding general of marine, the subinspector of engineers, and the civil chief of the Province of Manila, I hereby decree: Don Jose Camps, *comisario de guerra honorario, oficial mayor jubilado* of the office of the secretary of his superior government, and director of the ironworking and nautical instrument establishment of Camps é Hijos, is granted the possession and ownership of a parcel of land 200 brazas in length and 100 brazas in width, covered at present by the waters of the sea, near the Binondo beach, which land is situated alongside the *Murallón del Norte*, and requested authority to fill in the same at his expense is also hereby granted, subject to the following conditions and restrictions:

First. The land to be filled in shall form a quadrangle 200 brazas long and 100 brazas wide; beginning on the longer side, nearest to the Pasig River, at a point 25 varas from the bridge connecting the waters of the river and of the bay, and running parallel with the wharf toward the lighthouse.

Second. The buildings to be erected by Camps on this new land so granted shall be located along the said longer side parallel to the breakwater, separated from the edge of the exterior wharf for its whole length, a distance of 16½ varas, which is the width required for wharves.

Third. The said buildings shall consist of only one story,
108 no materials of the kind prohibited in the military zone shall be employed therein, and shall be roofed with zinc, tarred paper, nipa, or other similar materials.

Fourth. The said buildings shall be removed at the expense of Don Jose Camps or his successors whenever, at the discretion of the superior authority of the Islands, the military service so requires. Let the interested party be notified and a certified copy be issued to him.—Norzagaray.

At the request of the interested party I issue these presents at Manila, on the first day of July, eighteen hundred and sixty-two.

(Signed) J. LUIS BAURA.

Seal reading: Supreme Government of the Philippine Islands, Secretary's Office.

Thereafter, to-wit, on the 23rd day of June, 1904, counsel for petitioner appeared and asked the court, in view of the fact that counsel for the other side had had ample time to examine petitioner's original title deed theretofore filed, to set for an early date the continuation of the trial of this case.

On the 24th of the same month and year, the Clerk of said Court notified the Attorney-General, the attorney for the City of Manila, and counsel for petitioner that the trial of the case would be resumed July 12, 1904, at 9:00 A. M., at the Municipal Building, Calzada de las Aguadas, Manila, summoning them to appear at the time thus fixed by the Court and introduce whatever evidence they desired in support of their respective claims.

109 DEFENDANT'S EXHIBIT "A."

"Joaquin Salvador, 112 Escolta.

MANILA, *July* 3, 1902.

Arsenio Cruz Herrera, Chairman, Municipal Board, City of Manila.

MY DEAR SIR: As attorney in fact for Joaquin Jover y Costas, the present owner of the lands and marshes on the Malecon del Norte, between the Canal of Vitas and the light-house, desiring to continue the filling in of the said land in a more effective manner than heretofore, I hereby apply for the necessary permission to do so, enclosing herewith a map, memoir, and other documents noted below.

I beg to remain,
Yours faithfully,
(Signed) J. SALVADOR.

List of documents herewith enclosed:
Two maps and memoria as to proposed improvements.
Copy of grant.
Copy of deed of conveyance.
Certificate issued by the Register of Property.

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Record #337.

110 In the Matter of the Petition of JOAQUIN JOVER Y COSTAS.

At a session held by the Court of Land Registration in the City of Manila, on the 28th of July, 1904, at 9:33 A. M., the trial of the above-entitled cause was continued.

Attorney R. Palma, appeared for petitioner and M. Reyes, the City Attorney for the City of Manila, the latter having offered to the Court the testimony of the following witness, Mr. Camus, the interpreter for the Municipal Board, having been sworn to faithfully interpret his testimony into the Spanish language:

Testimony of S. O. Scudder,

who having been first duly sworn, testified that he was 25 years of age, single, surveyor for the Court of Land Registration, residing at 125 Sta. Potenciana, Walled City.

By Mr. REYES:

Q. (Showing a map to the witness.) I will show you this map attached to the record and will ask you if you recognize the same.

A. Yes, sir.

Q. Have you verified that map?

A. I have verified three times.

Q. Please state the result of the verification and investigation made by you?

A. First, I measured the line "BA" on the map and found that it was practically correct; if there was any difference it might be on account of some error in my measurement or in the survey of the engineer who made this map; this was the first line. Then I measured this line on an alley here from point "M" on line "AB"

111 to point "N"; this was the second time I measured. Point "N" I found to be the point to which the water reached at high tide generally and the distance is equal to the distance given here on the map. I was unable to measure the distance from "A" to point "P" because it was muddy and swampy and could not get there. There is a stone wall along this line but could not get there because it was muddy. Then I measured this line between points marked "Q" and "R" and found same to be correct, and in my opinion this map, insofar as the buildings and improvements on the land are concerned, is practically correct. I waited for the low tide; it was not the lowest tide and I saw the water go down to here, to the imaginary line in red pencil marked at the two ends with the letters "H" and "J". I found stones scattered within six meters along line "DE". I was unable to fix line "FE" because it was

indefinite. The stones were not joined but scattered in an irregular manner. And line "FP" I was unable to fix because it was under the water and there was no mark at all. I noticed a post at a point which I took to be point "E" somewhat inclined to one side. Line "P" "N" "K" "L" is approximately the high tide water line. It is marked almost in its full length by scattered stones. And from point "L" to point "N" there is distinctly marked a low stone wall; it looks like a wharf about half a meter above the ordinary level of the land. On this side of the wharf the land is filled up to the top of the wall but not so on the sea side. That is more or less what I observed on the land side. I also took notice of these buildings here (indicating the buildings of Castle Brothers, Wolf
112 & Sons and the Chinaman Tiong-Sing). The building of Castle Bros. is a warehouse with galvanized iron roof, with opening to the North and East. Building "A" has a galvanized iron roof and brick walls; in the center it has a dividing stone wall. Building marked "B" has the same location. The Chinaman's house has a galvanized iron roof but I do not remember the walls. I think they are of wood, but I am not sure. The small house marked "D" has wooden walls, with iron roof.

Q. Of the space between points "A" "B" "C" "D" "E" "F" on the map, how much is real land and how much is covered by the sea?

A. The area between the points "A" "B" "C" "D" "H" "L" "K" "P", I would consider as land, that is to say, one-third or one fourth of the whole.

Q. And the rest?

A. I would call that land subject to the tide of the sea, tide land.

Q. That land to which you have just referred subject to the tide, was it covered by the sea?

A. At high tide it is covered by the sea; at low tide it is almost entirely uncovered and it is a marshy land.

By the COURT:

Q. Is it muddy, swampy or sandy?

A. Swampy.

Q. Have you found any signs of occupation on that side subject to the action of the sea?

A. You mean to ask whether it is occupied with buildings?

Q. No, signs of occupation by some one?

A. Yes, sir.

Q. What is it?

113 A. There were some small fishing boats beached on swampy land and some logs of wood along the sea shore.

Q. Have you see- those fishing boats sailing over that place?

A. No, sir, I saw small *bancas*.

Q. Sailing over that place?

A. Yes, sir.

Q. Was it at high or low tide when you made that ocular inspection?

A. It was at medium low tide.

Q. At low tide can a person walk about the place?

A. It might be done with some difficulty.
Q. What would be the difficulty?
A. He might get stuck in the mud.

Mr. REYES: That is all.

By Mr. PALMA:

Q. On what day and at what time did you make the verification?
A. I do not remember the day, it was last week, between 10 and 12 in the morning.

By the COURT:

Q. Line "EF" which marks the limit between the sea and the land in question according to the map, has any visible sig- showing that it is the deciding line between the sea and the land?
A. No, because I did not reach that line.

I certify that the foregoing is a true and correct transcript of the stenographic notes taken by me in the above entitled cause.
Manila, August 8, 1904.
(Signed) A. GOMEZ JESUS.

114 On September 5, 1904, counsel for the City of Manila filed his argument in writing, and on the 20th of the same month and year, attorney for petitioner filed his reply thereto.
On February 7, 1905, the Solicitor-General filed his brief in behalf of the Government of the Philippine Islands.

PETITIONER'S EXHIBIT "H."

"Number Two Hundred and Fifty-four."

In Manila, this 9th day of April, 1897, before me, Enrique Barrera y Caldes, Doctor of Civil and Canonical law and a Notary Public in and for the City of Manila, personally appeared Juan Soler y Cendra, a merchant, of age, married, and a resident of this City, with personal cedula of the third class numbered 284, issued by the Government of this province.
And having in my judgment the necessary legal capacity to execute this instrument, nothing to the contrary to me appearing, freely, and of his own will, stated:
That he hereby grants and confers full and complete power, as ample as may be necessary in law, upon Joaquin Salvador y Mirrallas and Bartolomé de Castro y Linares, both clerks, of age, single, and residents of this City to, in his name and in his behalf, either jointly or separately, perform and execute the following acts:
To administer, manage and control the property, business and rents which their said grantor has in this City, with the greatest possible zeal and care; and for this purpose to collect and
115 receive all rents and products accruing from the same, contracting such mercantile obligations as they may deem proper and necessary and performing all other acts inherent to this power.

To demand, collect and receive all sums of money and all values, dividends or interest due their said grantor from any person or persons, corporations, associations or department of the Government by virtue of whatever title, action or right, and for this purpose to take such judicial or extrajudicial steps as may be necessary, executing, paid and disbursed by them under this power, to demand such receipts, acknowledgments and acquittances as mya be necessary.

To deliver such property and pay such sums, including taxes, as their said grantor is bound to deliver or pay, and for the sums thus paid and disbursed by them under this power, to demand such receipts, acknowledgments and acquittances as may be necessary.

To demand an accounting from those accountable to their said grantor, and to examine the accounts thus rendered, rejecting or approving the same as may be proper, demanding and receiving whatever balance may be found due in favor of their grantor.

To enter into all kinds of contracts, whether civil or mercantile, executing for this purpose such public instruments as may be required, in the manner provided by law.

To draw, indorse, accept or negotiate drafts, bills of exchange, warrants, letters of credit, tickets, chits, promissory notes payable upon demand and all kinds of securities but not to bind themselves with reference thereto as sureties for others, paying or collecting the amount thereof, as the case may be, when they may
116 become due, and protesting the same if necessary, prosecuting in this connection such remedies as the Code of Commerce affords to recover the amount due, together with accrued interest and damages.

To deposit all funds of whatever nature with any bank, association or private person, whether in account current or for safe keeping, taking such steps as may be necessary to draw, receive and collect the same, and for this purpose to sign checks, invoices, bills of lading and such other papers as may be necessary.

To make out and sign invoices, policies, bills of lading and such other documents as may be required in all matters and transactions in which the said grantor may be represented by his said attorneys by virtue of this power.

To claim and receive from the Custom House all goods, products and merchandise consigned to him, the said grantor, and for this purpose to sign all declarations relating thereto, making such complaints as may be proper, availing themselves of such remedies as the customs and revenue laws provide and allow, performing in this connection such acts as he, the grantor, would perform if he were present.

To compromise and compound all claims, actions and rights of whatever nature upon such terms and conditions as they may see fit to stipulate, submitting all disputes, if necessary, to friendly arbiters, for decision, executing such public instruments as may be necessary to this end.

To represent him, the said grantor, in all suits and actions to which he may be a party, in the ordinary courts of justice or courts of special jurisdiction, before the public authorities and all
117 departments of the Government, appearing before the same for the purpose of instituting such civil or criminal actions

as may be necessary, prosecuting acts of conciliation and of voluntary jurisdiction, and all criminal and civil ordinary actions, summary and possessory actions, actions in intervention, testamentary and bankruptcy proceedings and all other actions and proceedings known to the law, and for this purpose to file complaints, informations and such motions and pleadings as may be necessary, setting up such defenses and introducing such other evidence, whether of judicial confession, oral or documentary, as the law may allow, rebutting and disproving whatever may be alleged or done contrary thereto, accepting service of notices, citations and summonses; challenging such officials of the administration of justice as may be necessary; to impeach witnesses; to prosecute appeals, writs of error and revision and all other like remedies whether civil or criminal, from any order or judgment whatsoever; to desist from such appeals and remedies as they may see fit; to apply for attachments, levies, appraisals and execution of judgments, performing such other acts as the laws of procedure require in the trial and prosecution of judicial actions, down to their final determination.

And finally, to substitute this power in whole or in part in favor of such person or persons as they may see fit, and to revoke the same at pleasure, appointing others in their place or places.

Granting and giving unto his said attorneys the most ample and complete power required by law, hereby promising to ratify and confirm all that they may do in and about the premises under and by virtue of this power.

118 Mr. Juan Soler y Cendra, further states that by an instrument executed before José Ferrer y Bernadas, a Notary Public of the City of Barcelona, May 21, 1895, Don Joaquin Jover y Costas conferred upon him the power to administer and control his property and to represent and defend him in all actions in court, with express authority to substitute and delegate such powers as appears from the instrument in question, a certified copy of which he exhibited to me. That instrument is as follows:

"In the City of Barcelona, this 21st day of May, 1895. Before me, José Ferrer y Bernadas, a notary public in and for this city, and in the presence of the witnesses hereafter mentioned, personally appeared Joaquin Jover y Costas, of age, married, and a resident merchant of this City, with personal cedula of the first class No. 10, issued September 6, 1894, and having in my judgment the necessary legal capacity to execute this instrument, said:

That he hereby gives, and grants full and complete power to Juan Soler y Cendra, of age, married, and a resident of the City of Manila, to in his name and in his behalf, administer, manage and control whatever property he, the said Jover y Costas, owns at present, or may hereafter acquire in the City of Manila, Philippine Islands, demanding, collecting and receiving the rents and products of the same; to present such petitions and complaints to such persons, associations or authorities, whether executive, judicial, military or naval, as may be proper to defend and protect said property, and for this purpose to institute all necessary actions in the Courts of First Instance and other Tribunals, whether civil, admin-

istrative, military or naval, and to resist and defend all such
119 actions when brought against him, the said grantor, and in this connection to ratify all pleadings and proceedings when necessary and indispensable; to delegate and substitute this power in favor of one or more persons for the prosecution of the aforesaid actions and proceedings and generally to do all that they may deem proper for the defense of his, the grantor's, rights upon the said property, without any limitation, executing for this purpose such private and public instruments as may be necessary, promising to pay any judgment which may be rendered against him, the said grantor, and to ratify and confirm whatever his said attorneys or their substitutes may do in the premises under and by virtue of these presents. So said Joaquin Jover in the presence of Miguel Ugalde y Varela and Francisco Dannis y Tylrá, residents of this City, to all of whom I read this instrument, at their request, after they were informed of their right to read it themselves. I certify to the identity of the said grantor who signed this instrument in the presence of the witnesses and as to the contents he-eof.—(Signed) Joaquin Jover y Costas—Miguel Ugalde—Francisco Dannis—Jose Ferrer y Barnadas, Notary—rubric—The foregoing is a true copy of its original recorded under No. 695 in my protocol for this year. And at the request of Mr. Jover y Costas, I issue this copy, signed by me in Barcelona on the day of its execution. (Signed) Jose Ferrer y Barnadas.—rubric—Notary's Seal—The undersigned notaries of the City of Barcelona do hereby certify as to the authenticity of the foregoing signature, seal and rubric of the notary José Ferrer y Barnadas—Barcelona, the day, month and year above set forth.—(Signature) Ricardo Permanier—Joaquin Dalman y Fiter —(three *peseta* revenue stamp)"

The foregoing is a true copy of the original exhibited to me, to which I certify.

120 That by virtue of his right to substitute his said power of attorney, he hereby substitutes the same in favor of said Bartolome de Castro y Linares and Joaquin Salvador y Miralles, to in his name and in his behalf, jointly or severally perform all the acts included in said power in the manner therein prescribed.

So said in the presence of the witnesses Tomás Aquinlon and Zacarias San Pedro, both of age, and residents of this City. And this instrument having been read by all those present, the said Juan Soler y Cendra ratified and signed the same. To all of which, and to the identity, occupation and residence of Mr. Soler, I certify. (Signed) Juan Soler—Tomas Aquilon—Zacarias San Pedro.—Dr. Enrique Barrera y Caldes, Notary—Rubric.

The foregoing is a true copy of its original recorded in the protocol of public instruments of my office under number 254, to which I certify. And at the request of Mr. Soler I issue these presents on four sheets of paper under my seal and signature in Manila, the day, month and year above mentioned, after making the necessary notation thereof upon the original—(Signed) Dr. Enrique Barrera y Caldes. (Seal) It is sufficient. (Signed) J. Rodriguez Serra—(Seal: Banco Español Filipino, Oct. 28, 1902. Manila.)

121 THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

I, J. R. Wilson, Clerk of the Court of Land Registration of the Philippine Islands, do hereby certify: That the attached document is a true and correct copy of the original power of attorney filed in case No. 337, Joaquin Jover y Costas, petitioner, this certificate and the aforesaid copy to be united to the record of the said case No. 337 from which the original has been detached.

Manila, March 21, 1905.

[SEAL.] (Signed) J. R. WILSON,
Clerk of Court.

Thereafter, towit, on the 18th day of April, 1905, Hon. S. del Rosario, one of the Judges of the Court of Land Registration before whom the case was tried, rendered the following opinion, towit:

122 THE UNITED STATES OF AMERICA,
In the Philippine Islands:

Court of Land Registration.

JOAQUIN JOVER & COSTAS, Petitioner,

—

EL GOBIERNO INSULAR & LA CIUDAD DE MANILA, Contestants.

Decision.

Between the petitioner Joaquin Jover y Costas and the Insular Government of the Philippine Islands and the City of Manila, a dispute exists with regard to the land described in the petition, the former, Joaquin Jover y Costas claiming that the land belongs to him and the latter, the Insular Government and the City of Manila alleging that the said land belongs to the public domain.

From the evidence adduced it appears beyond a reasonable doubt that the land in question was the subject of successive conveyances since the same was granted by the Spanish Government to Jose Camps on February 12th, 1859, until finally acquired by Joaquin Jover y Costas, partly by inheritance from his father Juan Jover y Serra and partly by assignment in payment of his share in the property of the estate of his only brother Miguel Jover y Serra. It should be noted that Juan Jover y Serra, under whom the petitioner claims, bought the land in question for the sum of 32,000 pesos as appears from a public instrument executed in this City September 5, 1877 before the then Notary Public of this City Numeriano Adriano, from the heirs of Jose Camps.

The question thus raised by the parties is, whether the grant

of the land by the Spanish Government has become void
123 through lapse of time and whether the petitioner Juan Jover y Costas has acquired title to the entire land.

In order to decide this question it becomes necessary to examine the terms of the grant.

The said grant*s* reads in part as follows:

"*Don Jose Camps, Comisaria de Guerra honorario, Oficial Mayor Jubilado of the Office of the Secretary of this Superior Government, and Director of the Irion Works and nautical instruments establishment of Camps & Sons, is granted the possession and ownership of a parcel of land* 200 *brazas in length and* 100 *brazas in width, covered at present by the waters of the sea,* near the Binondo beach, which land is situated alongside the Murallon del Norte, and requested authority to fill in the same at his expense, is also hereby granted subject to the following conditions and restrictions:

"1. The land to be fill- in shall form a quadrangle 200 brazas long and 100 brazas wide; begin-ing on the longer side nearest to the Pasig river at a point 25 varas from the bridge connecting the waters of the river and of the Bay, and running parallel with the wharf towards the light-house.

"2. The buildings to be erected by Camps on this new land so granted shall be located along the said longer side parallel to the break water, separated from the edge of the exterior wharf for its whole length, a distance of sisteen and a half varas, which is the width required for wharfs.

"3. The said buildings shall consist of only one story, no material of the kind prohibitted in the military zone shall be employed therein, and shall be *foofed* with zinc, tarred paper, nipa or other
simmilar material.

124 "4. The said buildings shall be removed at the expense of Don Jose Camps or his successor whenever at the discretion of the superior authorities of the Islands, the military service so requires."

Judging from the words above underscored it would seem that the grant was absolute without any restriction whatsoever and that the grantee for this reason acquired the ownership and possession of the entire tract 200 brazas long by 100 wide along the beach and covered by the sea, whether it has been filled in or not.

However, in the opinion of this Court the grant is limitted to that portion of the land which the grantee might fill in. This is shown by the following paragraph contained in the grant:

"Acting upon the petition in which Don Jose Camps on November 17th, 1858, solicited a grant *for the land which he may fill in at his expense* on the sand bank run-ing along the Murallon del Norte (Northern Embankment) on the right bank of the Pasig River to the extent of 200 brazas in length by 100 brazas in width, etc.'

The grant according to the words above underscored refer*s* not to the entire trac*k* 200 brazas long by 100 wide described in the decree, as contended by the petitioner, but only to such portion of the land as the petitioner might fill in within these limits.

The above quoted words are clear and leave no room, in the

opinion of this court, for any other interpretation. Their scope is perfectly defined by the well specified reasons set out in the grant.

This grant was not made simply on account of the official and industrial merrits of Jose Camps and the promise of protec-
125 tion referred to in the decree of the 4th of November, 1858, when his offer to buy an irregular tract of land adjoining the new *Cuartel del Carenero* was refused, but because it would benefit maritime trade and greatly improve that part of the City if the iron works, foundry and manufecture of nautical instruments were built upon the land sought to be filled in as claimed in the reports of the Mayor of this City and the Director of Public Works of the Province, and further because it would be very convenient to the shipping interests as stated by the Commanding Officer of the Navy and the Captain of the Port. Hence, the reason for the grant was not simply the desire on the part of the Government to reward the official and industrial merrits of the grantee, but to encourage maritime trade and prom-te the shipping interest and to improve that part of the City by filling in the land along the water front then covered by the sea.

We can find no -ther reason for the grant. Its subject was land belonging to the public domain, devoted to public use as part of the beach. The deprivation of the use of the land, which is the subject of the grant, by the citizens and residents can only be explained upon the ground that it would mean an improvement to that part of the City and encourage maritime trade.

If the entire tract of land described in the grant has not been filled in, as it would appear from the evidence, but only a portion thereof, that is to say, that part occupied by the buildings thereon at present and that which has been converted into dry land, shown on the map as embraced between points "A B C D U L M and P," the grant should only be sustained as to the portion thus filled in and considered void as to the rest of the land which is not and cannot be considered as dry land under the terms of the
126 grant.

It is immaterial, for the purposes of the grant, that the iron works, foundry and establishment of nautical instruments of Camps & Sons were not removed to the land filled in. The subject of the grant was the land which might be filled in at the expense of the grantee, within certain limits. It was not dependant upon the removal of the said iron works and foundry. Hence, the expiration of the grant cannot affect the whole tract as contended by counsel for the Insular Government and the City of Manila, but only that portion not filled in and converted into dry land.

Against the contention of petitioner we hold that ordinary prescription cannot be the basis of title to land, for the deeds and grant now on file having been delivered to the purchaser Juan Jover y Serra by the vendors as stated in the instrument the terms of which are very clear, there is no reason to presume that he was a purchaser in good faith, good faith being one of the necessary requisit-s for prescription which, according to section 1950 of the Civil Code and Law 9, Title 29, Partida 3 in force at the time of the sale,

consists "in the belief that the person from whom the property is received, is the owner of and has the power to convey the same." It was not difficult for the purchaser to understand that the grant was subject to a condition upon which its legal efficacy depended. It will not avail him to allege that he was ignorant of the true meaning of the concession from a legal point of view for ignorance of the law is no defense to a purchaser, according to the judgment of the Supreme Court of Spain of October 8, 1862, and does not exempt a person from compliance therewith under section 2 of the Civil Code.

127 The grant having expired as to that portion of the land not filled in, it is evident that although the entire land was acquired by purchase in September, 1877 by Juan Jover y Serra, the petitioner's father, from the heirs of Jose Camps, grantee, only that portion thereof already filled in, was legally conveyed to him, this being the only part of the land upon which the said Juan Jover y Costas had acquired title and the only part which he could legally have recorded in the Registry of Property in view of the legal maxim that a portion cannot convey more rights than he has and the principle of the Mortgage Law that the inscription does not make valid those acts which are void and have no legal efficacy.

The inscription made in the old Registry of Property of the portion of land not filled in, is void, for the reasons above given and the court must here make a finding to that effect notwithstanding the fact that none of the contestants have requested the court to do so, since this is something which affects the title claimed by the petitioner, and a question which the court must necessarily decide in passing upon the petition for registration under section 2 of Act 496.

Wherefore, the opposition of the Insular Government of the Philippine Islands and of the City of Manila, based upon the same grounds, both having simply asked the court to deny the petition for registration, is hereby sustained as to that portion of the land not filled in, and rejected as to that part already filled in.

128 It is decreed that, upon a general entry of default, only such portion of the land in question shown in the map as embraced within points marked "A B C D U L K N and P," be registered and the petition is denied as to the rest of the land included in the map, without special order as to costs.

Upon this decision becoming final, and it will become *to* final if within 30 days no exception is filed thereto, it is ordered that a decree be entered, after the map has been duly amended by the petitioner with the conformity of counsel for contestants, in accordance herewith. And considering the nature of this decree it is ordered that the Register of Titles of this City cancel the entries appearing at pages 23 and 26, volume 15, District of Binondo, Property No. 793, first and second inscription, not partially but entirely.

Manila, April 18, 1905.

[COURT SEAL.] (Signed) S. DEL ROSARIO.

129 THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Record No. 337.

Filed April 25, 1905.

JOAQUIN JOVER Y COSTAS, Petitioner,
vs.
THE INSULAR GOVERNMENT and THE CITY OF MANILA, Contestants.

The petitioner, through its attorneys hereby excepts to the judgment of the Court in so far as it denies petitioner's title to that portion of the land in question not filled in, and respectfully asks the court to set aside the said judgment and order that a new trial be had for the following reasons:

That the evidence does not justify the decision of the Court; that the conclusions contained in the said decision are manifestly against the weight of the evidence; and that the decision is furthermore contrary to law.

Manila, April 24th, 1905.
(Signed) PALMA, GERONA & MERCADO,
By RAF. PALMA.

Received copy.
(Signed) MODESTO REYES,
City Attorney.

Received Copy, Manila April 25th, 1905.
(Signed) ISIDRO PAREDES,
Assistant Attorney.

130 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of Land Registration.

Record No. 337.

JOAQUIN JOVER Y COSTAS, Petitioner,
vs.
THE INSULAR GOVERNMENT AND THE CITY OF MANILA, Contestants.

Now comes the Solicitor General in behalf of the Insular Government and excepts to the decision of this Honorable Court insofar as it decrees the registration of part of the land which is the subject of petition, and asks this Court to set aside said decision and order that a new trial be had for the following reasons:

Because the evidence does not sufficiently justify that part of the judgment excepted to; because the findings of the court with regard

thereto are openly and manifestly contrary to the weight of the evidence, and, further, because the judgment is contrary to law.

Manila, April 25, 1905.

(Signed) GREGORIO ARANETA,
Solicitor-General.

Received copy,
PALMA, GERONA Y MERCADO,
By J. GERONA.

131 On the 26th of April, 1905, the Court of Land Registration overruled the foregoing motion for a new trial and the parties were notified accordingly.

On April 28th, counsel for petitioner duly excepted to the order of the court overruling his motion for a new trial and announced his intention to prosecute an appeal by Bill of Exceptions to the Supreme Court of the Philippine Islands.

On May 2, 1905, the Solicitor-General of the Philippines in behalf of the Insular Government filed his exception to the order of the court in the above entitled cause announced his intention to present a Bill of Exceptions.

Then follows a certificate of the Clerk of the Court of Land Registration, in the words and figures following, towit:

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Record No. 337.

JOAQUIN JOVER Y COSTAS, Petitioner.

I, hereby certify that the following is an excerpt of the minutes of this Court of May 5, 1905, as appears from the minute-book.

"Appearances: Rafael Palma for petitioner and appellant, Isidro Paredes for the Insular Government, defendant and appellant and Manuel Camus representing the City Attorney, Modesto Reyes, for the City of Manila, defendant and appellee.

With the amendment suggested by counsel for the City of Manila, and accepted by counsel for petitioner, the same consisting
132 in that the City of Manila duly excepted to the decision of the Court, the Bill of Exceptions presented was approved, the Court directing that the original of the same be forwarded to the Clerk of the Supreme Court.

[SEAL] (Signed) J. R. WILSON,
Clerk, Court of Land Registration.

On May 9, 1905, the Clerk of the Court of Land Registration transmitted to the Clerk of the Supreme Court of the Philippine Islands the record and proceedings in the above entitled case, which were received in the Supreme Court on May 10th, 1905.

On September 5, 1905, counsel for petitioner filed his brief in the Supreme Court.

On March 1, 1907, the case was duly argued and submitted in the Supreme Court of the Philippine Islands.

On March 25th, 1905, the Supreme Court of the Philippine Islands rendered its decision in the above entitled cause, which said decision is in the words and figures following, towit:

133 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,
vs.
THE INSULAR GOVERNMENT and THE CITY OF MANILA, Respondents and Appellees.

March 25, 1908. General Register No. 2674. Decision Book 15, F. Heard, March 1, 1907.

CARSON, J.:

Although we are unable to agree upon the grounds upon which our conclusion is based, we are of opinion that the judgment of the Court of Land Registration should be affirmed, without costs to either party.

So ordered.

(Signed) A. C. CARSON.

We concur:

(Signed) FLORENTINO TORRES.
" VICTORINO MAPA.
" CHARLES A. WILLARD.

Arellano, *C. J.*, did not vote.

JOHNSON, *J.*, dissenting:

On the 10th day of December, 1903, the petitioner and appellant filed a petition in the Court of Land Registration for the
134 registration, under the Torrens system, of the following described land:

"Bounded on the front by the Pasig River; on entering on the right, by the canal or creek of Vitas; on the left by the grounds and buildings belonging to the Bureau of Coast Guard and Transportation of the Insular Government; and on the back by Manila Bay. It is more particularly described in the technical description which is attached to and forms a part of this application; and as detailed in the attached map has an area of 63,342.70 square meters."

The petitioner alleged that the said land had been assessed by the City of Manila at the sum of $247,578, United States currency, and that the buildings thereon had been assessed at $8,000, United States currency. The petitioner alleged in his petition that he was

the absolute owner of said property, and made a part of his petition various documents showing the succession of title from the Spanish Government, as well as a map and technical description of said property.

The petition of the plaintiff, together with the documents showing his title, were referred to the examiner of titles for the judicial district of said court, who, upon the 26th of January, 1904, made the following report concerning the title of the petitioner.

"1. In the Register of Property, Inscription No. 1, lot number 793, page 23, Volume 15 of the Binondo Section, and 52 of the Archives, the following appears: (A) That Jose Horacio, Aurora, and Maria Dolores Camps, and the minor, Aurelia Roman, the surviving child of Josefa Camps, were declared to be the heirs of their deceased father and grandfather by an order made and
135 entered on the 20th of September, 1870, by the Court of First Instance of Intramuros, whereby Jose Camps y Montilla was also appointed guardian of the said minor Aurelia Roman, and was held to be the legal representative of his brother Horacio, and of his sisters, Aurora and Maria Dolores; (B) That by a grant from the Supreme Government of these Islands, the said Jose Camps, deceased, became the owner of a tract of land 400 yards long by 200 wide on the Malecon del Norte of the District of Binondo, whereupon stand two adjoining warehouses of strong materials, and one house, which has since disappeared, which said land is now mortgaged to secure the payment of a loan of 7,777.86 dollars in favor of the Obras Pias; (C) That the said property was sold at public auction in the Court of First Instance of Intramuros August 17th, 1877, to one Manuel Alvarez, as agent for Francisco Fernandez y Fajarnes for the sum of 32,000 local currency; and as heirs of the deceased, Jose Camps, his son, Jose Camps, Jr., for himself, and in behalf of his brother, Horacio, and his sisters Aurora and Maria Dolores Camps, and in his capacity as guardian of Aurelia Roman, having been duly authorized by the Court, he sold the said property by a public instrument to Francisco Hernandez y Fajarnes, who in turn transferred the same, for the same price of 32,000 dollars, local currency, to Juan Jover y Serra, represented by Eduardo Vidal; (B) Juan Jover y Serra died without a will in the City of Barcelona February 22nd, 1879, and at the request of his surviving wife, Maria Rosa Costas y Llucia, his children Miguel and Joaquin
136 Jover y Costas were declared to be his heirs March 7, 1879, by the Court of First Instance of San Pedro de Barcelona; (E) Miguel Jover y Costas also died without a will, April 29, 1888, and his mother, Maria Rosa Costas y Llucia, and his brother, Joaquin, were declared to be his heirs May 29, 1888, by the Court of First Instance of the City of Barcelona; and (F) That by a public instrument executed in the City of Barcelona before the notary public Manuel Larratea y Catalan, August 22nd, 1888, Maria Rosa Costas and Joaquin Jover made a partition of the property of the estate of Miguel Jover, and agreed that her share in the property in question be awarded to Joaquin Jover in payment of his share in the estate. Subsequent to this par-tion the said Rosa Costas and

Joaquin Jover executed another instrument wherein it was set forth that Joaquin and his deceased brother, Miguel Jover had built, at their own expense, two warehouses upon the land in question, according to certain summary proceedings approved November 17th, 1888, and recorded December 6th, following, in the office of the notary Enrique Barrera; and that the said warehouses and land belonged to the two brothers, Miguel and Joaquin Jover, equally, and that the share corresponding to the former became the property of the latter by virtue of the said agreement of partition.

"2. In the second inscription of the property in question it appears that there were built upon the same, by Joaquin Jover y Costas, two buildings, the first consisting of two adjoining warehouses of strong material, forming a single structure, and the other being a warehouse with galvanized iron roof, at a cost of
137 8,000 dollars and 3,500 dollars, respectively.

"3. On the margin of the first inscription it appears that the mortgage on the said property was canceled, according to marginal notes, pages 125, 13 and 32 of the old books of the former Register of Mortgages, now abolished.

"4. The first inscription is partly corroborated by a deed of sale executed before the notary public, Numeriano Adriano, September 5, 1877.

"5. The documents examined by me show that the owner of the property in question is Joaquin Jover y Costas. The present metes and bounds of the property can be considered as correct.

"6. The Registry of Property shows no act or contract unfavorable to petitioner's title, and investigations made by the undersigned do not disclose any facts contrary to the allegations of the petition.

"Opinion.

"Upon the foregoing report, the undersigned is of the opinion that the title of Joaquin Jover y Costas is good and may be registered.

"Manila, January 26, 1904.

"(Signed) AGUEDO VELARDE."

On the 13th day of April, 1904, the City of Manila, by its attorney, filed in said Court its opposition to the registration of the said land in favor of the petitioner, basing said opposition upon the ground that the said land was within the limits of the City of Manila, and that it belonged to the public domain.

On the same day the then Acting Attorney General for the Philippine Islands, representing the Insular Government of the
138 Philippine Islands, presented his objection to the registration of the said land in favor of the petitioner, upon the ground that the land constituted a part of the public lands.

The issue being thus formed, the case was duly tried and after hearing the evidence adduced during the trial of said cause, the said Court of Land Registration granted registration of that part of the said land within the letters A-B-C-D-U-L-K-M-P as repre-

sented on the plan presented by the petitioner as a part of his petition, and refused to register in favor of the petitioner the balance of the lands included in said plan.

From this decision, the petitioner and the Insular Government each appealed.

The petitioner and appellant made the following assignments of error:

"I. The Court — by stating that the concession 200 brazas long and 100 brazas wide on the place marked therein, was not absolute.

"II. The Court erred by declaring that, even supposing that the concession was constitutional, the condition has not been complied with.

"III. The Court erred in determining that the concession was only for the portion "which is or may be filled in" within the limits of the concession.

"IV. The Court erred in declaring that a Spanish conditional concession of lands might be impugned after the Treaty of Paris, and that the entry in the registry of property might be canceled."

139 The Insular Government, respondent and appellant, made the following assignments of error:

"I. The Court erred in stating in its decision that the question raised by the parties is reduced to a determination of whether the concession of the land granted by the late Spanish Government has expired, and whether said land has been transferred in its entirety to the petitioner, Juan (Joaquin) Jover y Costas.

"II. The Court erred in not declaring that the concession of the land, which is the subject-matter of this case, granted by the Gov-rnor-General of the Philippines in favor of Jose Camps, is null and void.

"III. Even admitting the validity of the concession, made to Jose Camps, the Court erred in not holding that such concession in its entirety was granted under the condition and limits expressed in the grant, and especially under the condition that the land granted would be filled in, and that the concession would not produce its effects until such condition had been complied with.

"IV. The Court erred in not declaring that the concession made to Jose Camps has completely expired, the latter having failed to comply with the condition of filling in all the land granted by said concession.

"V. Finally, the Court erred in not declaring null and void the entry in the Registry of Property as regards the whole of the land granted, instead of only that as to the portion of the same not filled in."

The petitioner and appellant contends that he is the absolute owner of the land in question. He bases his contention

140 upon the following facts:

First. That the Spanish Government on the 12th day of February, 1859, conceded to Jose Camps the absolute right and title to the possession of said land, which grant was evidenced by the following document:

"Don Jose Luis de Baura y Soriano, lawyer of this royal court of chancery, Knight of the Military Order of San Juan of Jerusalem; Member of the Royal Economical Society of 'Friends of the Country'; member of the general commission of statistics; and secretary of the superior civil government of these Islands, etc.

"I certify that on the petition filed by Don Jose Camps, *Oficial primero jubilado* of this office, in which petition he asks for the concession of a piece of land, 200 *brazas* long and 100 *brazas* wide, in the lowlands back of the northern wharf (Murallon del Norte) of the Pasig River, the superior decree, hereinafter set forth, was issued on February 12, 1859:

"'Acting upon the petition in which Don Jose Camps on November 17th, 1858, solicited a grant for the land which he may fill in at his expense on the lowland situated along the northern embankment (Murallon del Norte) and on the north side thereof, on the right side of the mouth of the Pasig River, with an extension of 200 brazas in length and 100 brazas in width, beginning at a distance of 25 *varas* (Spanish yards) west of the bridge built on
141 said wharf for the connection of the waters of the river and of the bay from the beach of Binondo, as appears on the plan hereto attached, to which land, after it has been filled in, he intends to move his artistic establishment called "Camps é Hijos", and a manufactory of hemp rope; in view of the report made on the 26th of the said month of November by the Alcalde Mayor 1° of Manila, who, after consultation with the director of public works of the province, is of the opinion that the waste land asked for should be granted to Camps, said land being at present covered by the sea, and being far from the houses situated on the Binondo beach, it is very suitable for purposes of maritime commerce and it is convenient for the purpose of public adornment, that the foundry, ironworking, and scientific instrument establishment of Camps é Hijos, be located on that place, provided that the said Camps shall agree not to erect said building with brick and stone or strong materials, for the reason that the same is outside of the military lines; in view of the report made on December 17, 1858, by the Commanding General of Marine, in agreement with the captain of the port, regarding the convenience of such concession for the merchant marine and public adornment, but with the precise condition that Camps shall leave a distance of 16½ varas between the outside edge of the wharf and the intended building, which width is the one fixed for wharves; in view also of the report of the subinspector of engineers,
142 with the approval of the commander of the post, proposing that the concession asked for shall not be granted for a building of strong materials, on account of the forts of the place, and that the building to be erected shall consist of only one story, and shall be removed at the expense of its owner, at the discretion of the superior authority of the Islands when the public interests so require, taking into consideration the circumstances and official and industrial merits of the said Don Jose Camps, and the offer of protection as stated in the decree dated November 4, 1858, when refusing the same asked for by him, of an irregular piece of land

adjoining the new *cuartel del carenero,* and in conformity with the above-mentioned reports of the commanding general of marine, the subinspector of engineers and the civil chief of the province of Manila, I hereby decree: Don Jose Camps, *comisario de guerra honorario, oficial mayor jubilado,* of the office of the secretary of his superior government, and director of the iron working and nautical instrument establishment of Camps é Hijos *is granted the possession and ownership of a parcel of land* 200 *brazas in length and* 100 *brazas in width, covered at present by the waters of the sea near the Binondo beach, which land is situated alongside of the 'Murallon del Norte,' and requested authority to fill in the same at his expense is also hereby granted, subject to the following conditions and restrictions.*

143 "First. The land to be filled in shall form a quadrangle 200 brazas long, and 100 brazas wide, beginning on the longer side nearest to the Pasig River, at a point 25 varas from the bridge connecting the waters of the river and of the bay, and running parallel with the wharf toward the light house.

"Second. The buildings to be erected by Camps on this new land so granted, shall be located along the said longer side parallel to the breakwater, separated from the edge of the exterior wharf for its whole length, a distance of 16½ varas, which is the width required for wharfs.

"Third. The said buildings shall consist of only one story, no materials of the kind prohibited in the military zone shall be employed therein, and shall be roofed with zonce, hard paper, nipa, or other similar material.

"Fourth. The said building shall be removed at the expense of Don Jose Camps or his successors, whenever at the discretion of the superior authority of the Islands the military service so requires. Let the interested party be notified and a certified copy be issued to him.

"NORZAGARAY."

"At the request of the interested party I issue these presents at Manila, on the first day of July, 1862."

"(Signed.)

"There is a seal reading: 'General Office of the Secretary of the Superior Government of the Philippines.'"

Second. That on the 17th day of August, 1877, the said land having become the property of the heirs of the said Jose Camps, was sold by said heirs to Juan Jover y Serra.

144 Third. That sometime on or about the 22nd day of August, 1888, the estate of the said Juan Jover was duly settled and the property in question, under the division of this estate became the property of his son, Joaquin Jover y Costas, the petitioner herein.

Fifth. That the original grantee, Jose Camps, and his successive grantees have been in the actual, peaceable, quiet, and uninterrupted possession of said land since the said 12th day of February, 1859.

Sixth. That the title to said land had been duly registered in the register of property of the province of Manila.

Seventh. That at the time of the purchase of the land in question by Juan Jover, the father of the present petitioner, due inquiry was made by him or his representative, of the representatives of the Spanish Government, then existing in the Philippine Islands, concerning the validity of the original grant to the said Jose Camps, and he was informed by each of them that the said grant was made with authority and was valid. (See testimony of Eduardo Vidal, record, pages 82, 89.)

Eighth. That relying upon the validity of the title obtained under the above grant by the said Jose Camps, the petitioner and his ancestory paid for the said land the sum of 33,000 pesos.

Ninth. That relying in good faith upon his title thus obtained the petitioner has made improvements upon the said land, so that now, according to the assessing authorities of the City of Manila, the land with such improvements is valued at $255,578, United States currency, or the sum P511,156.

145 Tenth. That the Spanish Government fully recognized the title of the predecessor of the present petitioner.

(1) By making an express grant of the said land to the said Jose Camps; and

(2) By permitting the said Camps and his successors to register the said title in the registry of property, thus holding out and representing to third persons that the petitioner and his predecessors were the real owners of and entitled to the possession of said land as against all the world.

The contention of the respondent and appellant, in effect, is that the said grant above quoted was made without authority, and was therefore null, and that the predecessor of the present petitioner acquired no rights in said land.

The lower court held, in effect, that the grant was valid, but that it was conditional, and that the grantee Jose Camps and his successors only had acquired ownership to so much of the land included in the original grant as he and they had actually reclaimed and terraplaned, and that the part of said grant which had not been reclaimed had not passed to the said Jose Camps and his successors, but still constituted a part of the public domain.

The contention of the petitioner and appellant is that the original grant was valid; that the authority to make such grant was fully justified; that said grant was not conditional but was absolute, and that the absolute title with the right to possession of all the lands mentioned in said grant, passed, without condition or limitation, to the said Jose Camps.

146 The United States Government has from time to time acquired large tracts of territory, with the right to govern the same, from the Government of Spain. In each of the various cessions, made by the Government of Spain to the United States, there have been found numerous tracts of land ceded by the representatives of the Spanish Government to private persons. Many of these cessions to private persons, at the time of the transfer of the prop-

erty to the United States Government, have not been completed: in other words, at the time the United States Government took possession of these various grants of property, it found private persons laying claim to certain tracts or parcels of land, claiming under grants made by the representatives of the Spanish Government, but who had not complied, technically, with all of the conditions of said grants. However, it has been the policy of the Government of the United States, in every instance where it was possible, to respect such grants and to protect such persons in the interest which they had acquired from said Spanish Government. Instances without number might be cited to support this statement. The United States Government, through its courts, has presumed, whenever it found a grant of land made by a representative of the Spanish Government, that the person making such grant had authority so to do, unless the party disputing the grant presented positive proof to the contrary. The United States Supreme Court has frequently decided that "public acts of public officers, purporting to be exercised in an official capacity and by public authority, shall not be presumed to be usurped, *but that the legitimate authority*
147 *had been previously given or subsequently ratified.*" To adopt a contrary rule would lead to infinite confusion and uncertainty of titles. The presumption arising from the grant itself makes it *prima facie* evidence of the power of the officer making it and throws the burden of proof on the party denying it.

In the present case the respondent and appellant presented no proof in the court below showing or tending to show that the said grant was made without authority.

The Supreme Court discussed at length, in the case of the United States vs. Clark (8 Pet., 436), the powers of the Spanish Governors and other Spanish officers to grant land within the colonies and there held that such governors and such Spanish officers, as a general rule, within the colonies, had full authority to grant title to lands, and that such authority was without restriction as to quantity. Such governors had full authority to grant titles to lands without restriction, and these grants have always been respected by the United States Government.

In support of this general policy adopted by the Government of the United States, we desire to call attention to the following cases: U. S. vs. Arredondo, 6 Pet. 691; U. S. vs. Percheman, 7 Pet., 51; U. S. vs. Clarke, 8 Pet., 436; U. S. vs. Sibbald, 10 Pet. 313; U. S. vs. Levi, 8 Pet., 479; U. S. vs. Segui, 10 Pet. 306; U. S. vs. Chaives, 10 Pet. 308; U. S. vs. Seton, 10 Pet. 309; Fremont vs. U. S. 17 How. 542-576; Pacheco vs. U. S. 68 U. S. 282; Moore vs Steinbach, 127 U. S., 70.

148 In the present case, the grant of land to Jose Camps was made by a proper authority of the Spanish Government in the Philippine Islands. The Government received what to it was a full compensation for the land and delivered the same to him, at the same time executing and delivering to him a document in which the Government fully indicated that the land was granted to him without any reservation whatever. Under this grant, Jose Camps

went into possession and had the same surveyed, and properly segregated from the public domain.

After the date of said grant, the Spanish Government continued to control the Philippine Islands for a period of nearly 40 years, allowed the original grantee and his successors to continue in possession, to make valuable improvements thereon, without making any objection whatever to the validity of the original grant. We believe that any objection made on the part of the Government of the Philippine Islands after the lapse of nearly 40 years during which time the original grantee and his successors have been in the quiet, peaceable, and uninterrupted possession of said land, under an express grant of the Spanish Government, is contrary to the spirit of the United States Government and contrary to the policy which it has adopted in dealing with lands the title to which had been granted to private individuals by the Spanish Government.

The grant of February 12, 1859, was absolute to a definite tract of land and no conditions precedent or subsequent were imposed.

The grantee was required to do nothing in order to make
149 said grant to said tract of land complete. He has expended large sums of money upon the same, believing that the Government would protect him in the title which he had, and which had been granted without reserve and without conditions to his predecessor.

We have said that it was the policy of the Government of the United States to maintain grants of land made to private persons by the Spanish Government in territory acquired by it. It is not necessary, however, to rest our conclusions upon the mere policy adopted by the Government of the United States upon the theory that the Spanish officers making such grants had authority, for the reason that we find abundant express authority applicable to the Philippine Islands on the part of the officer making the grant in question to justify his authority in so doing.

It is manifest that the validity of the concession like the one in question must depend upon the authority of the Governor General, in his capacity as superior civil governor, to make it.

The Governor and the Captain General was the direct representative of the King in this Archipelago. In order to determine the questions presented, it is necessary to ascertain first the authority of the latter, because if the King could not make the grant, clearly, he could not delegate such authority to his representative.

On both of these points, towit, the authority of the King and the delegation thereof to the Governor-General, I am content to rest my opinion on the following authorities found quoted in the brief and written argument of Hon. W. A. Kincaid, one of the attorneys for the petitioner:

150 "The preamble of title 1 of partida 2 reads:

'Emperors and Kings are the most noble men and honorable persons, invested with powers, more than anybody else, to maintain and keep their Kingdoms in justice, as we have said in the beginning of this partida * * *.'

"And law 5 of the same title of the same partida, reads:

'*Kings are representatives of God* in their respective Kingdoms, appointed over the people in order to maintain them in justice and in truth regarding temporal affairs, as is an emperor in his empire * * *. *And the saints said that the King is placed on earth in place of God, in order to comply with justice and to give to every one his rights.*'

"Law 8 of the same title and *partida*, speaking of Kings, says:

'For they are not only the lords of their kingdoms during their lives, but they may leave the same to their heirs at their death, because they possess such seignory by inheritance, which can not be done by Emperors, who obtain the same by election as has been said. And, moreover, *the King may give a town or a castle of his Kingdom by way of inheritance, to whosoever he may wish,* which an Emperor can not do, because he is obliged to increase his empire, and never reduce the same; in the same manner, the King might grant such property by feudal tenure to anyone he wished in consideration of some service performed or promised to be performed by the latter. We hold also that the King may utilize the services or help of his people when necessary, in many ways, which the emperor can not do.'

151 "In Law 5 of this same title and *partida*, it is said:

'And wise men naturally said that *the King is the head of the kingdom*, for, as the senses are derived from the head, by which senses all members of the body are governed; in the same way all members of the kingdom must be ordered and led by the order derived from the King, who *is the lord and the head of all of them,* and they must agree with him in order to obey and protect him, and to preserve and increase the kingdom. *Hence, he is the soul and head, and they are the members.*'

"That is to say, on the date in question, the Spanish king was the vice-regent of God in his dominion, the same as the superior civil governor of the Philippines was with respect to the King. In this sense, law 5, title 3, book 3, Laws of Indies was enacted, which reads as follows:

'It is our will, and we order that the viceroys of Peru and New Spain be the governors of the provinces under their charge, and that they rule and govern the same in our name, and *make rewards, favors, and pardons* which they may deem to be convenient.'

"In law 2, title 3, book 3 of the Laws of the Indies, it is said:

"Those who are to be appointed viceroys of Peru and New Spain shall have the conditions and qualifications required by an office of so great importance and dignity, and after they have commenced to perform their duties * * * *they shall do what they may thing and consider to be suitable, and provide for everything we might do and provide for, of whatever quality and condition*

152 *it may be, in the provinces under their charge, as if the same were governed by ourselves, in all cases where no special prohibition exists* * * *.'

"Law 3, title 3, book 3 of the Laws of the Indies reads as follows:

'The viceroys of Peru and New Spain are hereby constituted and appointed captains-general of the provinces of their districts and

they are permitted to personally exercise this office therein over sea and land on all occasions that may arise * * * and *we order that* * * * they be obeyed and respected as the persons representing *ourself* * * *.'

"The royal ordinance of December 4, 1786, in its article 2 (Legislacion Ultramarina, Coronodo, p. 372, vol. 3), says:

'The viceroy of New Spain shall continue *in the full exercise of the supreme authority and entire powers granted by my royal patents and instructions and the Laws of the Indies as the Governor and Captain-General in the District under his command* * * *.'

"The royal order of February 18, 1835, addressed to the Captain-General of the Island of Cuba, reads:

'Your Excellency: *Her Majesty, the Governing Queen, has been informed of the contents of your letter of the 25th of November, last, regarding the inconvenience resulting at present from the weakening of your authority as first chief of the Island by the*
153 *appointment of a civil governor; and in view of the statements of Mr. Francisco de Arango, on the 16th of the same month, in reply to the royal order of April 12, of last year, asking him for a report on this matter, Her Majesty has declared that the duties and powers of the civil governor of the Islands are to be exercised by you in your capacity as Captain General* * * *.'

"This royal order giving to the Captain General the character of civil governor for the Island does nothing *but ratify the Supreme authority already conferred on the former*, (according to Zamora y Coronodo in his Legislacion Ultramarina, p. 292, vol. 3, edition of 1845), to secure public peace, good order, policing and governing, the security of the persons and property of the inhabitants of the Islands, the publication and punctual execution of the laws and orders of the superior government, and in general *everything touching* public order and *the greatest prosperity of the territory entrusted to him* * * *.

"Sr. Rodriguez San Pedro, on page 65 of volume 1 of his Legislacion Ultramarina, from which we took the other citations, speaking of governors-general as successors of the viceroys, says in his note:

'In order to maintain peace and justice in the provinces of the Indies, supreme courts (*audiencias*) and magistrates were formally instituted, but as said provinces became sufficiently inhabited and ennobled, it was deemed convenient, that at least in the principal
ones governors of a higher designation be appointed, with the
154 title of viceroys, who would justly perform the duties of presidents of the *audiencias* therein, and who would hold solely under their charge the government of those wide kingdoms and of all military operations that might occur therein as captains-generals of the same, and who, finally, *might do, and would actually do, and who might take, and would actually take care, of all those things that the royal person would do and take care of if he were present*, and which they might deem suitable for the conversion and protection of the natives, the propagation of the holy gospel, politi-

cal administration, and for the peace, tranquil-ity, and increase of all spiritual and temporal affairs.

'The first governors appointed *were given particular instructions* as to their conduct therein, *which instructions were gradually extended and are so full and complete that they do not seem to have failed to foresee or to provide everything necessary* for the exercise of their duties, piously, cautiously, and prudently, the greater part of said instructions being compiled in the Laws of the Indies.

'In the provinces under their command, and in all cases and matters not specially excepted, *they have and exercise the same powers as the king appointing them, and this jurisdiction was ordinary rather than conferred.*

* * * * * * *

'On account of the great dignity of the office of viceroy and of the immediate represen-ations of the royal person, all cere-
155 monies and homage paid to the Kings themselves may be and are usually rendered to the former, except those especially prohibited * * *.'

"On account of certain differences having arisen between Governors-General of *Ultramar* and deputy superintendents of finance, the royal order of March 4, 1844, was promulgated, which reads as follows:

'Your Excellency: Her Majesty, the Queen, agreeing to the proposal of the cabinet (*consejo de los señores ministros*) has resolved that, inasmuch as there is joined to the persons of the governors-general (*gobernadores capitanes generales*) of these Islands, the character of superior political governors (*gobernadores politicos superiores*) for which reason *they are also the superior delegates of the supreme government in all its branches*, and it being desirable to guard against all doubt prejudicial to good service, with respect to the prerogatives granted them by the laws of the Indies in book 3, to hear in certain cases matters concerning the royal treasury (*real hacienda*), the said *gobernadores capitanes generales*, shall be always considered as preferred over the deputy superintendents of finance, the decision of any doubtful cases that may occur between both authorities, being therefore, under their control * * *.' (*Legislacion Ultramarina* by San Pedro, vol. 1, page 75.)

"This leads us very near the date in question.

"And in law 9, title 17, book 4, of the Laws of the Indies, we find a text exactly applicable to the case of this grant, which reads:

'Viceroys and the *audiencias shall see to what is necessary*
156 *for good administration with regard to pastures, waters, and public buildings, and shall provide what may be deemed convenient for the occupation and* perpetuity of lands * * *.'

"It might, perhaps, be said that, according to laws 3 and 4, title 8, *partida* 3, marshes formed by the overflow of the tide, on account of their being on the shore, belong to those communal things which all men may use; but, should we base such observation on the said laws, we would disregard the full powers of sovereignty of the nation, that is, of the King, 'the representative of God on earth.'

"These laws might be strictly applicable to private persons, but as regards the King, who acts through his viceroy, it should never be forgotten that no laws existed in the whole kingdom other than his will, and when a law or any other thing was in opposition to this will, the former had to give way to the latter, because it was the supreme will on the earth. Therefore, these laws may produce their effect, only when the sovereignty of the nation, to which the seashore belongs, does not wish to order otherwise.

"This, besides being logical, has been precisely established by the Supreme Court of Spain in the following decision:

'That, although laws 3 and 4, title 28, *partida* 3, explaining and determining what are the things common to all men, and how the latter may use them, enumerate, among others, the sea and
157 its shores as such common things, yet this should not be understood to be absolute, since several exceptions are established for the common benefit, which exceptions have been enacted in order to attend to the security and general interests of the nation, *and that the latter may grant the lands of such shores for improvement whenever the same are not under private ownership acquired by legitimate title.*' (Decision of May 1st, 1863).

"In another decision of April 30, 1863, it was also held:

'1. That the general principle that the sea and its source belong to all creatures in common, and that all may use them, which principle has been already limited in certain cases, by the same laws and orders establishing the same, may be and is actually limited by administrative orders, which, modifying it in its exercise, subject the same to special and determined rules granting and creating rights of possession and exclusive benefits in the place and within the limits which are granted, provided this is done by the one who has authority to order it, and in such a way that the communal use is not prevented.

* * * * * * *

'3. *That in the time when the King used to administer the properties and interest of the nation, he was the legitimate representative of the latter.*'

"In any case, marshes formed by the overflow of the tide,
158 in the Indies, were specially reserved to the King, since law 6 of the *ordenanzes de poblaciones* of Philipp 2nd of 1523 and 1680 (vol. 4, p. 473, Legislacion Ultramarina by Coronado), provides:

'No territory or land for a new town shall be granted, nor shall one be *established on seaports, nor in any place*, which at any time might result in prejudice to our royal crown, or to the nation, *because it is our will that such lands be reserved for us.*'

"Such reservations were made for the purpose of benefitting those who might go to inhabit them for the first time, or with a view to doing with them whatever might be the royal will, as law 11 (*id.* p. 474) says:

'Land shall be divided by lot between the inhabitants, continuing from those corresponding to the "*plaza mayor*", *and the remainder be reserved so that we may grant the same to those who may go and*

found a town for the first time, or for what might be our will; and we order that a plan of the place where the city is to be founded be always made.'

"In the City of Galveston vs. Menard (23 Tex. 349), the Supreme Court of that state, after noting the rules of the Roman Civil Law, adopted in the Spanish and Mexican laws, regarding the provisions governing shorelands, which rules were cited as a defense in that case by alleging that the shore was dedicated to the public use, stated (page 391):

'The Republic of Texas had the power, through its legislative department, to grant that part of the Galveston bay, which lies south of the channel, usually covered with salt water, which constitute what is called the "flats": and thereby vest an ex-
159 clusive right in Menard to the soil thereof, and to the full ownership of the same, *just as if it had been dry land.*

'This power results as a necessary consequence of the absolute sovereignty of the Republic over the territory included in its limits * * *. This claim of the Republic upon her coast may not have been admitted by other nations, further than one marine league from the shore. (Angel Tidewaters 2; Battel 129.) That would very much have depended upon the power to enforce her claim, as we have seen in the case of the British seas and Danish sound (Wheaton's Law of Nations, 152-158; 1 Kent Com. 29). But as between her own citizens, in respect to the rights to the soil, which they might respectively acquire, the boundaries, prescribed and claimed by the Government, is conclusive. (Vatt. 128). Her right to an inland bay, such as Galveston bay, could not be disputed; both as to right of property in the unappropriated soil, and in the jurisdiction of her government, (id. 123, 124, 130).

'In the civil law it is said that the sea, bays, and rivers, with their shores, were common; free to use of anyone and are deemed to belong to no one. (Angel, 18, 19, 178, 179) Battel on this subject, says, "The shores of the sea, incontestably belong to the nation that possesses the country, of which they are a part; and they belong to the class of public things. If civilians have set them down as things common to all mankind, *it is only in regard to their use;* and we are not thence to conclude that they considered them as independent of the empire; the contrary appears from a great number of laws. Ports and harbors are, manifestly, an appendage to, and even a part of, the country; and consequently are the property of the
160 nation. *Whatever is said of the land itself will equally apply to them,* so far as respects the consequences of the domain, and the empire.' (Angell 129).

'* * * It often happens, however, that the public use and enjoyment of this species of property may be promoted and increased by allowing portions of it to become private property; * * *. If the Government could not exercise this right in severing this common property and appropriating portions of it to private use, it would not only curtail the ordinary powers, which every nation has for self-development, but it would presuppose a deficiency in the sovereign power to control or dispose of what belongs to it.'

"If a constitutional republic has these powers, with much more reason an absolute monarchy, which has no other restrictions than the will of a monarch or of his viceroy must be invested with the same.

"In Knight vs. United States Land Association (142 U. S. 161) the Supreme Court, speaking of the treaty of Guadalupe Hidalgo, by virtue of which the United States acquired the State of California, among other things, said (pages 186-188):

"* * *. When the United States acquired California, it was with the duty to protect all the rights and interests which were held by the pueblo of San Francisco under Mexico. The property rights of pueblos equally with those of individuals, were entitled to protection, and provision was made by Congress in its legislation for their investigation and confirmation. * * * The duty of the Government and its powers in the execution of its treaty obligations to protect the claims of all persons, natural and artificial,
161 * * * were superior to any subsequently acquired rights or claims of the state of California, or of individuals. * * * Its rights were dependent upon Mexican laws, and when Mexico established those laws she *was the owner of tide lands as well as uplands, and could have placed the boundaries of her pueblos wherever she thought proper.* * * * The treaty of cession also stipulated for such protection. The obligation to which the United States thus succeeded was, of course, political in its character, and to be discharged in such manner, and on such terms, as they might judge expedient.'

"Under the common law of England and the United States, two kinds of law exist, called *jus privatum* and *jus publicum*. The former is inherent in the sovereign who possesses the same as the owner, and the latter is the right which the Government or the sovereign has, to control waters in the interest of the public. It results that the States of the American Union have not only the ownership of the soil under the waters, but at the same time they have powers to regulate and control the public rights. (Martin vs. Waddell, 41 U. S. Pet. 367, 10: 997; Smith vs. Maryland, 59 U. S., 18 How., 71, 15: 269; Com. vs. Alger, 7 Cush, 53; Nichols vs. Boston, 98 Mass. 39, 93 Am. Dec. 132; People vs. New York and S. I. Ferry Co., 68 N. Y. 71; Langdon vs. New York, 93 N. Y. 129; Stevens vs. Peterson & N. R. Co., 34 N. J. L. 532; 3 Am. Rep. 269; Gould on Waters, sec. 32; Manchester vs. Massachusetts, 139 U. S. 240, 35: 159; McCready vs. Virginia, 94 U. S. 391, 24: 248; Den vs. The Jersey Co., 56 U. S. 15 How. 426, 14: 757; Harding vs. Jordan, 140 U. S. 371, 35: 428; Goodtitle vs. Kibbe, 50 U. S., 9 How.
162 470, 13: 220; Doe vs. Beebe, 54 U. S. 13 How. 25, 14: 35; Pollard vs. Hagen, 43 U. S. 3 How. 212, 11: 565; Mumford vs. Wardell, 73 U. S. 6 Wall. 436; 18: 756; Webber vs. State Harbor Comrs. 85 U. S. 18 Wall. 57, 21: 798; St. Clair Co. vs. Lovingston 90 U. S. 23 Wall. 46, 23: 63; The Genesee Chief vs. Fitzhugh 53 U. S. 12 How. 443, 13: 1058).

"The legislature of the states having the supreme power, *may dispose of the property of the same states on navigable waters in whatever manner that, in its opinion, may serve the public interests.*

(Kerr vs. West Shore R. Co., 127 N. Y. 269; Lyman vs. Jedney, 114 Ill. 388; Harris vs. Whiteside County Suprs. 105 Ill. 445; Cairo & St. L. R. Co. vs. Warrenton, 92 Ill. 157; Mason vs. Wait, 5 Ill. 127; Nichols vs. Boston, 98 Mass. 39; Hoboken vs. Pennsylvania R. Co., 124 U. S., 656, 31: 544; Pound vs. Turck, 95 U. S. 459, 25: 525; N. Y. vs. Miln., 36 U. S. 1 Pet. 102, 9: 648; Cooley Const. Lim., 87-89.)"

"This right of the states is subject only to the power of Congress to control and regulate navigation. (Illinois vs. Illinois Central R. R. Co., 146 U. S. 387).

"In U. S. vs. Arredondo (6 Pet. 691) dealing with a Spanish concession granted on December 22nd, 1817, by Don Alejandro Ramirez, intendent in the army and subdelegate and general superintendent of unappropriated lands in the Island of Cuba and both Floridas, the Supreme Court of the United States, among other things, said:

' * * * The laws of an absolute monarchy are not its legislative acts, they are the will and pleasure of the monarch, expressed in various ways; if expressed in any, it is the law; there is no other law making, law repealing power—call it by whatever name,
163 a royal order, an ordinance, a *cedula*, a decree of council, or *an act of an authorized officer*, is made or promulgated by the king, by his consent or authority, it becomes, as to the persons or subject-matter to which it relates, a law of the Kingdom. It is emphatically so in Spain and all its dominions. * * * The instructions of the King to his governors are the supreme law of the conquered colony; * * *. A royal order, emenating from the King, is a supreme law, superseding and repealing all other preceding ones inconsistent with it. The laws of the Indies have not their force as such, by any legislative authority vested in the council, their authority is by the express or implied expression of the royal will and pleasure, they must necessarily yield to an order prescribing a new rule, conferring new powers, abrogating or modifying previous ones.

'The principle that the act- of a King are in subordination of the laws of a country, applies only where there is any law of higher obligation than his will; the rule contended for may prevail in a British, certainly not in a Spanish province.'

"All this is sufficient to prove that, at the date in question, no law could be invoked against an act of the King of Spain or of a viceroy representing him.

"This case of U. S. vs. Arredondo agrees exactly with the grant in question, for it is said further in the same, (page 734):

164 ' * * * *. It appears in evidence, by authentic documents, that, in 1816, a controversy arose between the captain-general and the intendent of the Island of Cuba, as to the superintendency of the royal domain of the Floridas, which being referred to the King, he, by a royal order of the third of September, 1817, conferred it on the intendent, Ramirez, 'commanding him therein to facilitate the increase of the population of these provinces by all the means which zeal and prudence could dictate.' This is the order recited in the grant, and the authority under which it was made: with the general superintendency of the domain of the provinces, the local authorities acting under his direction and supervision, and

acting under the command contained in the order, we can have no hesitation in saying that the grant in question was within the authority thus conferred. This order was a supreme law, superseding all others, so far as it extended; its object was to increase the settlement and population of the whole province, which could only be done by corresponding grants of land, adequate in extent to their desired effects. The power to do it was ample, and the means confided to the discretion of the officer, which was not limited. We can not say that, in executing this grant, he has acted without authority. Our opinion, therefore, is that * * * the grant is perfect and valid, and even if a special authority was requisite, that is conferred by the royal order referred to.'

"It is immediately seen that the royal order above-mentioned in the case of Arredondo is very similar to law 9, title 17, book 4 of the laws of the Indies, which reads:

'Viceroys and *audiencias shall see to what is necessary* for
165 good administration with regard to pastures, waters, and public buildings, and shall provide what may be deemed convenient for the occupation and perpetuity of lands * * *'.

"But, in any case, the royal *cedula* and instruction of October 15, 1754, (*Legislacion Ultramarina* of San Pedro, vol. 4, p. 673), is an express delegation of all the prerogatives of the King, and places the question beyond discussion, inasmuch as it says:

'Experience having shown the damages caused to my vassals in the kingdoms of the Indies by the order published by royal *cedula* of November 24, 1735, stating that those who might enter the unappropriated lands of those dominions should personally apply to my royal person, in order to ask ratification of the limits assigned to them, under penalty of losing the same, should they fail so to do * * * *I have decreed that, in gifts, sales, and agreements regarding unappropriated lands,* * * * the contents of these instructions shall be carefully observed and practiced.

'1. That, from and after the date of this, my royal resolution, the power to appoint the deputy ministers *who shall exercise and effect the sale of and agreements regarding unappropriated lands be exclusively in the hands of the viceroys and presidents of my royal audiencias* in those kingdoms * * *'

"But this is not all; the presumption that the superior civil governor of the Philippines had sufficient power to make the grant in question, is conclusive.

"In the same case of Arradondo, the court, at page 724,
166 in reply to the request of the Attorney-General of the United States, that the petitioners be compelled to exhibit the authority under which the grant, etc., was made, said:

' * * * As it formed no part of the evidence of title to be recorded, deposited, or acted on by the commissioners, they were not authorized to call for it, before making their decision. The grant, legally and fully executed, was competent evidence of the matters set forth in it, and as none other was necessary it was in effect conclusive.'

"And on page 727, after having discussed the various laws enacted by Congress regarding the Spanish grants in the territory of

the Floridas, and the intention of the United States to establish tribunals to examine the same, said:

' * * * They (the United States) have submitted to the principle which prevails as to all public grants of land, or acts of public officers, in issuing warrants, orders of survey, permission to cultivate or improve, as evidence of inceptive and nascent titles, which is, that the public acts of public officers, purporting to be exercised in an official capacity and by public authority, shall not be presumed to be a usurped, but a legitimate authority, previously given or subsequently ratified, which is equivalent. If it was not a legal presumption that public and responsible officers, claiming and exercising the right of disposing of the public domain, did it by the order and consent of the Government, in whose name the acts were done, the confusion and uncertainty of titles and possessions would be infinite, even in this country; especially in the States whose
167 tenures to land depend on every descriptive and inceptive, vague and inchoate equity, rising in the grade of evidence, by various intermediate acts, to a full and legal confirmation, by patent, under the great seal.

'To apply the principle contended for to the various papers which are sent from the general or the local land offices, * * * by requiring any other evidence of the authority by which it was done than the signature of the officer, the genuineness of the paper, proved by witnesses or authenticated by an official seal, would be not only a dangerous tendency, but an entire novelty in our jurisprudence, as "a rule of equity or evidence" or "principle of law or justice". * * * '

("The Camps grant was authorized by the signature of the superior civil governor and certified by the secretary of the superior government of the Philippines, with the latter's seal.)

'A patent under the seal of the United States, or a State, is conclusive proof of the act of granting by its authority its exemplification is a record of absolute verity. (Patterson vs. Winn, 5 Pet. 241.) The grants of colonial governors, before the revolution, have always been, and yet are, taken as plenary evidence of the grant itself, as well as authority to dispose of the public lands. Its actual exercise, *without any evidence of disavowal, revocation, or denial by the King, and his consequent acquiescience, and presumed ratification, are sufficient proof, in the absence of any to the contrary* (subsequent to the grant), *of the royal assent to the exercise*
168 *of his prerogatives by his governors.* This or no other court can require proof that there exists in every government a power to dispose of its property; * * * we are bound to presume and consider that it exists in the officers or tribunal who exercises it, by making grants, and that it is fully evidenced by occupation, enjoyment, and transfers of property, had and made under them, without disturbance by any superior power, and respected by all coordinate and inferior officers and tribunals throughout the State, colony, or province where it lies. * * *

'Taking, then, as a settled principle, that a public grant is to be taken as evidence that it issued by lawful authority, we proceed to

examine the legal effect of a Spanish grant * * *. The validity and legality of an act done by a governor of a conquered province depends on the jurisdiction over the subject-matter delegated to him by his instructions from the King. * * * If any jurisdiction is given and not limited, all acts done in its exercise are legal and valid; if there is a discretion conferred, its abuse is a matter between the governor and his government, etc. (King vs. Picton, Late Governor of Trinidad, 30 St. Tr. 869-871.) It is a universal principle that where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject-matter; and individual rights will not be disturbed collaterally, for anything done in the
169 exercise of that discretion, within the authority and power conferred.'

"Beside the full powers conferred on the Governor-General of the Philippines by a *King who claimed to be 'the owner of the ocean and of the Indies,'* the royal order of January 4, 1856, existed. (1 San Pedro, p. 75) which provide:

'Your excellency: By the royal order of November 17, 1854, instructions were given to the superior authorities of *Ultramar*, for the purpose of securing the due fulfillment of the sovereign's orders in those provinces. As a complement thereof, and by virtue of the same principles of regularity and good administrative order dictating it, Her Majesty the Queen has ordered *that the said authorities inform this ministerial office monthly of all the resolutions* conclusively enacted by them in the exercise of their powers, by means of brief but clear reports. Of this royal order I inform you for your information.'

"It is to be presumed, therefore, that the grant made in favor of Camps was duly communicated, in conformity with the preceding order, and, consequently, *it is as valid as if the same had been signed by the King himself with the assent of his ministers.*

"The Attorney-General, however, says in his brief that the Governor-General of the Philippines, on the date in question, was neither a viceroy, nor had he the powers of the latter.

"Coronado in his Legislation Ultramarina (Vol. 2 pp. 175-176) says:

'Captains General of Ultramar.—The Governors Captains-
170 General of the Island of Cuba and the Philippines, who have been so from the 16th century, and those at Porto Rico, who were declared Captains-General in 1643, united all the powers and prerogatives and annexed to the superior authority exercised by them over all military and political matters in the districts under their command, and those included under the titles of viceroys and presidents in the laws of the Indies, with the following powers: Those inherent in their character and dignity as presidents of the territorial *audiencias;* those as delegates of the royal *"Patronato"* of the Indies; those as presidents of various boards and corporations, sub-delegates of posts, etc.; and besides their ancient powers as residing *corregidores* of their respective *ayuntamientos*, there have

been recently conferred upon them those of civil governors, subordinate to the *ministerio de estado,* the *despacho de marina, gobernacion de ultramar.*

'This consolidation of such vastly important powers, although it has some inconveniences, has been deemed necessary in order to surround with prestige and sustain a superior authority, at so great a distance from the sovereign, in the capitals of those large provinces, sufficiently to provide speedily and easily all requirements for their preservation and tranquility, for which the captains-generals are responsible, and to provide also a good policy and administration, the security of the persons and property of the inhabitants, the publication and due execution of the laws and orders emenating
from the high government, and, generally, every wise and
171 prudent measure demanded by the public order, the tranquility and the greater prosperity of the country entrusted to them.'

"In the Dictionary of the Administration of the Philippines by Rodriguez Berriz (vol. 8, page 179) under the heading 'Manila' we find the following:

'(*Honors*)—(Royal Cedula of June 21, 1574—D. Felipe, by the grace of God, etc. Whereas, by the council of justice and administration (*Regimiento*) of the City of Manila, Island of Luzon of the West, we have been informed that the inhabitants of said city have served us very faithfully and loyally, and have suffered great hardships, and said Island having been discovered and pacified, and the said City having been founded therein, and Governor Miguel Lopez de Legaspi, now deceased, having in our name founded the same and called it "Noble and Ever Loyal City", and the Island of Luzon "The New Kingdom of Castile," requesting that, for the greater growth of said City and to perpetuate the memory of the services performed by its inhabitants, we confirm the said titles 'Noble and Ever Loyal City' for Manila, and "The New Kingdom of Castile" for the said Island of Luzon, and that we be pleased to so call and designate them, or as we might wish; therefore, I, agreeing to the above stated, and in consideration of the faithful and loyal services rendered to us by the said City and its inhabitants, have approved the same; and hereby *affirm* and *approve* the title of
"Noble and Ever Loyal City" for the City of Manila, given
172 by the said Governor Miguel Lopez de Legaspi, in our name, and the said title and new name of "The New Kingdom of Castile", for the said Island of Luzon, and we assent that the City of Manila may be perpetually called and designated "Noble and Ever Loyal", and the Island of Luzon "The New Kingdom of Castile," and we by virtue of this letter — given them such title and name as well as the license and right to be so called and designated, and to so state in all instruments whatsoever that might be made and granted by them, and in the letters they might write and I order these presents to be issued and signed by myself and sealed with my seal, and issued by the members of my council of the Indies.)'

"Laws I and II of Don Felipe IV, book 2, title 15 of the *Recopilacion de Indias*, are as follows:

'Whereas in the places which have been so far discovered in our kingdoms and seignories in the Indies, twelve *audiencias* and royal chancellories are established, with the limits expressed in the laws which follow, in order that our vassals may have those who will govern and direct in peace and justice, and the districts of the same have been divided into *gobiernos corregimientos and alcaldias mayores*, which provision is made in accordance with our laws and orders, and the same are subordinate to the *audiencias reales*, and all of them are subordinate to our supreme council of the Indies, which represents our royal person; therefore, we hereby decree and order, that, for the present and until further orders, the said *audiencias* be preserved, and, in the district of each of them the
173 *gobiernos, corregimientos and alcaldias mayores*, at present existing, and that no alteration be made in them without our express order or that of our said council'.

'In the City of Manila, Island of Luzon, capital of the Philippines, another *audiencia* and royal chancellory is established, with a president who shall be the Governor and Captain-General; four associate judges (*oidores*) who shall be also criminal judges (*alcaldes el crimen*); one fiscal; one high constable; one vice-grand chancellor (*teniente de gran chanciller*), and the other necessary ministers and officials; and the said *audiencia* shall have as its district the lands of the said Island of Luzon, already discovered and which may be discovered. *And we order that the governor and captain-general of the said Islands and provinces, and president of the royal audiencia of the same, hold exclusively the superior government of the whole district of said audiencia in peace and in war, and make in our royal name these sentences and grant those favors, which, in conformity with the laws of this "Recopilacion" and of these Kingdoms of Castile, and with the instructions and powers received from us*, he may and ought to make, and in all those administrative cases and matters of importance, the said president-governor shall try the same together with the *oidores* of said *audiencia* in order that they give him their opinion *in consultation, and after hearing the same, he shall provide for what is best for the service of God and our own interests* and the peace and tranquillity of the said province and community.'

174 "By law 5, book 3, title 11, laws of the Indies, dated April 1, 1580, it was said to the Governor-General and President of the Royal Court of the Philippines:

'The Governor and Captain-General of the Philippine Islands shall always endeavor to keep good relations, peace, and tranquility with the emperor of Japan, using to this end the most prudent and convenient means, whenever affairs so allow, and not risk the reputation of our arms and state in those oriential seas and nations.'

"Law 18, book 3, title 4 of the *Recopilacion de Indias*, states:

'The Governor and Captain-General of the Philippine Islands shall take care to reward soldiers who may have served us there, as well as their sons, with the offices and trades under his control, in

conformity with what has been ordered and in conformity with justice, so that they may have some reward conforming to all the laws providing for the matter' (Law 14, Book 3, title 10 of the *Recopilacion de Indias*).

"The royal order of August 16th, 1854, provides as follows:

'Article I. The governors captain-general of *Ultramar shall continue to discharge the duties of the office of delegate* superintendents of the royal treasury in their respective provinces in the same manner and with the *same powers as viceroys, as determined* in the ordinances of the Intendents of 1786 and 1803.' (San Pedro, Legislacion Ultramarina, vol. 1, page 75).

"On account of an application filed by the commanding general of the *apostadero* of marine of Havana, the royal order of
175 May 16th, 1861, said, among other things, the following:

'And regarding the third and last of the consulted points; as has been decided in the previous one, and as has been suggested by the captain general as *deputy of His Majesty and of his Government,* the marine authorities and the escuadron under their orders, as an auxil/ary force, are to support the orders of that high functionary. Therefore, the consultation above mentioned having been decided in so far as the same has merit, it is only to be added that, under the provisions of the royal decree of August 9, 1854, still in force, the captains general of our dominions in *Ultramar enjoy the full powers with which the former viceroys of the Indies were invested* with respect to the marine, according to articles 94, 95, 96, and 97, volume 6, title 7, of the Ordinances of the Navy of 1793, and that, although the commanding generals of the Navy have to obey the orders received from the captains general, by assisting them with the naval forces under their command * * * .' (San Pedro, Legislacion Ultramarina, vol. 1, page 77).

"The decree herein mentioned must be that of August 16th, 1854, just cited, inasmuch as no decree dated the 9th can be found.

"By the royal order of November 5th, 1842, the following was resolved:

'1. To the *superior political governors, presidents of the audiencias of the Island of Cuba, Porto Rico, and the Philippines,* is given the publication of all the laws and decrees to them communicated for due execution in their own dominions, *and they have the*
176 *power to suspend the same* and to ask for them in those cases in which the welfare and tranquil-ity of the country so requires, in accordance with the laws.' (San Pedro, Legislacion Ultramarina, vol. 1, page 81).

"By the royal order of June 18th, 1859, a few months after the date of the grant in question, the following was ordered:

'Your Excellency: In view of the proceedings started on account of the questions which have arisen between the *governor, captain general of the Philippine Islands* and the commandant of the *apostadero* of marine of the same, for the reason that the latter put in force the provisions of the royal decree of April 8th, 1857, regarding the organization of marine courts without having obtained the assent of the former; Her Majesty, in conformity of the advice of

the Departments of *Ultramar* and Marine of the Ministry (*Consejo de Estado*), has expressed her will that your ministerial office caution the chief of that *apostadero* to observe the royal orders of November 5th, 1842, and November 28th, 1884, by which *the governors captains general of Ultramar are vested with the power to suspend the execution of all royal orders and to approve those which are to rule in the territories under their respective commands,* and that all other authorities agree with them and obtain their assent for the publication of those communicated to them directly by their respective departments.' (San Pedro Legislacion Ultramarina, vol. 1, page 82).

"The royal *cedula* of May 24th, 1790, (published in volume 1 of San Pedro, Legislacion Ultramarina, pages 135 *et seq.*), dealing with the honors and privileges of the president and *oydores* of the royal *audiencia* of Manila, when the same are to pay a visit
177 to the president, or are to attend public ceremonies, *always qualifies the governor and captain general as viceroy or president.*

"The royal order of April 16th, 1850, regarding the board of authorities, powers, and organizations, says:

'Your Excellency: Under this date I inform the *governors captains general of the Island of Cuba, Porto Rico and the Philippines* of the following: Proceedings having been commenced in the ministerial office under my charge, in consequence of a communication from the governor captain general of the Island of Cuba, sent through the Office of the First Secretary of the State Department regarding the powers of the boards of authorities etc., in the dominions of *Ultramar*, Her Majesty, the Queen, in conformity with the statements of the ministerial offices of Finance and of Marine, has resolved:

'1. That the said board of authorities shall consist in each island of the *governor captain general as president*, of the deputy superintendent of finance, of the president of the *audiencia* of the capital, and of the commanding general or highest officer of the navy.

'2. *That the board neither has nor can have any other character than that of an advisory board in all those matters about which, because they relate to the departments of marine or finance, its president may deem it convenient to consult the views of the said board,* or in those extraordinary cases in which he may require the counsel and cooperation of the other authorities, for which purpose he may cause a meeting of the same whenever he may deem it convenient, or whenever he may be invited to do so by any of the other
178 authorities forming the said board.

'3. *That whatever may be the views of the board, the superior political authority shall be at liberty to resolve the case* in the manner he may deem to be the most convenient for the performance of his duty, but should the said superior authority base his opinions on the views of the board, he shall not thereby be freed from responsibility, except in those cases in which the matter is entirely under the control of the department of marine or finance.

'4. That the ample powers granted to the governor captain gen-

eral are extended to any extraordinary condition which may arise on account of interior or exterior events which may put in danger or prejudice the interest of the mother country; but he must always consult the board of authorities, even when the decision is exclusively his, as well as is the responsibility.

* * * * * * *

'10. That, inasmuch as all the authorities are obliged to respect the *governor captain general of each island as the first officer* in the hierarchical order and the one responsible for good order and security, each of the said authorities shall take care to fulfill the charge entrusted to him under the rules established by the laws and the particular instructions of each department.' (San Pedro Legislacion Ultramarina, vol. 1, page 140.)

"The above-mentioned powers were increased on account of the communication from the governor-general of Cuba, by the royal order of May 26th, 1851. (San Pedro, vol. 1, pages 141, 142, referring to Cuba), which increase *was extended also to the*
179 *Philippines* by another royal order of October 15th, 1851. (San Pedro, vol. 1, page 143.)

"Under date of December 17th, 1857, the governor captain general of the Philippines issued a decree concerning the Marianas Islands, a decree which could not be issued except by one who had been invested with full powers of sovereignty:

'Superior Government of the Philippines.—Under this date I have decreed the following: In view of the reasons stated in the preceding communication by the governor of Marianas regarding his inability to perform the measures, which in his opinion are necessary for the best administration and improvement of those Islands, on account of his having to wait for the approval of this superior authority, in order to do so, which approval is sometimes a period of some years in reaching there, because of lack of communication, and these reasons being well founded, and desiring to remove any obstacle that may oppose the financial improvement and civilization of those inhabitants, who deserve particular attention on account of their backward condition and the especial situation of said Islands, which are a stopping place or port for whaling ships and which will become a stopping port for nearly all the vessels traveling from the western coast of America to Asiatic ports, when the said Islands have sufficient production, I hereby confer on the governor of those Islands, major of infantry, Don Felipe de la Corte, Captain of the Engineer Corps, *ample authority in order that he may at once begin and perform any governmental measure he may deem conducive to an increase of inhabitants and the production of the Islands under his command, and any other orders which he may consider to be to*
the public good in all those matters not in opposition to the
180 *general laws of this Kingdom, nor onerous to the royal treasury.* Let this decree be communicated to whom it may concern. Which I beg to communicate to Your Lordship for your knowledge. God guard you for many years.' (San Pedro, Legislacion Ultramarina, vol. 1, page 213.)

"Under the date of April 30th, 1851, the same governor general

of the Philippines approved the following treaty made with the Sultan of Jolo, annexing his sultanate to the Spanish monarchy, in the following terms:

'Article 17. The articles contained in this solemn record shall have from this date their entire force and value, the same being, however, subject to the superior approval of his excellency the governor captain general of these Islands. Any doubt that may arise regarding the text of this record shall be decided in accordance with the Spanish text literally. Signed in Jolo on the 19th day of April, 1851. There follows the seal of the Sultan. Idem of the Datto Mahamed Bullo. Idem of the Datto Daniel Amil Bajal. Idem of the Datto Muiok Cajal. Idem of the Datto Tamangon. Idem of the Datto San-Ya-Jan. Idem of the Datto Mamancha. Idem of the Datto Mulok. Idem of the Datto Ban-Da-Jala. Idem of the Datto Amil Baral. Idem of the Datto Yo-Han. Idem of the Datto Nait. And the signature of the sheriff Mahamad Binsarin. The military and political governor of the province of Zamboanga etc., Jose Maria de Carles y O'Doile.

'I, Don Antonio de Urbistondo y Eguia, Marques de la Solano, Knight of the Grand Cross of the Royal American Order of Isabel the Catholic, of that of San Fernando, of First and Second Class, and of that of San Hermenegildo, Lieutenant General of the National Army, Governor and Captain-General of the Philip-
181 pine Islands, president of the royal *audiencia* of the same, sub-deputy judge of the postal revenues, Royal Vice-Patron and Director General of the Troops, etc., in the name of Her Majesty the Queen of Spain, Doña Isabel II (Q. D. G.) hereby approve, confirm and ratify this capitulation.' (San Pedro Legislacion Ultramarina, vol. 1, page 235.)

"In the royal cedula of July 31st, 1744, published in the first volume of the autos acordados, *the governors and captains general of the Philippines are called Royal Vice-Patrons.* (Also in) another of April 25th, 1847, suspending law 20, title 7, book 1, of the Laws of the Indies (2 autos acordados, 84.)

"In the royal cedula of September 7th, 1758, published on page 12 of volume 1 of the autos acordados, the King addresses it to the *"Governor and Captain General of the Philippines and President of my Royal Audiencia of the Same."*

"In volume 1, page 3, of the Legislacion Militar, by Salinas y Angulo, which treats of the Philippines as a military district, it is said:

'Office of the Captain-General.—Its Origin.—The Philippine Archipelago forms a district, the origin of which dates back to the year 1571, when the adelantado of the Marianas Islands, Don Miguel Lopez de Legaspi, completed the conquest of the Philippines and was appointed their first *governor, uniting the political and the military commands, which his successors have kept, together with that of the presidency of the audiencia,* according to the provisions of laws 3, 4 and 5, title 3, book 3, of the Recopilacion de Indias *for*

the viceroys of America, who were also captains general of
182 *their districts, the same being the case with independent governors, such as that of the Philippines, as set forth in all the royal cedulas which nominate them, with the said three titles* whatever may be the object of the said cedulas or the department to which they belong.

'The free election of *the person who was to discharge the government of the Philippines was designated in the royal order of April 4th,* 1821, *when it was ordered that the offices of viceroys, captains-general, and governments of Ultramar should be discharged for an indeterminate period, and at the King's will,* who might remove the said officers at his will. This royal order was modified in its essence by the royal order of October 14th, 1867, which ordered that such appointments should be made by the president of the cabinet of ministers, in accordance with the latter and at the proposal of the same, the said office being obliged to communicate the corresponding orders to the other ministerial offices. This is the practice followed at present. (1879.)' Ibid, page 5.

"In the case of Benedicto vs. De la Rama (2 Off. Gaz. 166), this Court, speaking of the suspension of titles four and twelve of the Civil Code by the commanding general of these Islands said:

'Moreover, the power of the governor-general, without such order (of the Supreme Government) to suspend the operation of the Code, was well settled. A royal order so stating was issued at Madrid on September 19th, 1876, and with the *cumplase* of the Governor-General published in the *Gaceta de Manila* on November 15th, 1876.'

183 "As we have already seen, the same powers existed in the governor-general of these Islands on the date of the grant in question, which powers were sufficient to actually repeal a considerable part of the Civil Code, which fact corroborates what has been stated, that no law can be invoked against a grant in the Philippines made by the Spanish King or by his Viceroys.

"The history of the Philippines, inserted in volume 1 of the official census, at page 389, et seq., says the following:

'The powers given to a governor of the Philippine Islands were practically unlimited, and no law could be enforced or remain in force if it was not in accordance with his views.'

My conclusions are, therefore:

(1) That the grant in question was absolute and unconditional;

(2) That the authority making the same had full power so to do;

(3) That the grant was to a definite, well-defined, tract of land;

(4) That the petitioner and his predecessors have been in the quiet, peaceable, and uninterrupted possession of said land under said grant for nearly fifty years;

(5) That the Spanish Government permitted the title of the petitioner and his predecessors to be registered in the public registry of property, thereby representing to all persons that the petitioner was the owner of said land;

(6) That the petitioner has reclaimed a large portion of said land and has expended large sums of money in so doing;

184 (7) That the Government of the United States in the Philippine Islands recognized the title of the petitioner by taxing the same in the name of the petitioner;

(8) That the Government of the United States, if it desires to annul the grant made by the Spanish Government, must bring an action for that purpose and can not do so in a collateral proceeding;

(9) That the lower court had no authority to cancel the registration of the title to said property in a collateral proceeding;

(10) That the lower court erred in holding that the original grant contained a condition, to-wit, that the petitioner and his predecessors were only entitled to so much of said tract of land as should be reclaimed.

For all of the foregoing reasons, in my opinion, the judgment of the lower court should be reversed and the petitioner should be permitted to register, under the Torrens system, his title to the land described in the grant of the 12th day of February, 1859.

TRACEY, *J.*, dissenting:

Notwithstanding inferences to the contrary from some decisions by American courts, it is, as a matter of history, as well-settled as a matter of that nature can be, that the power to grant land under tidal waters was one expressly reserved to the King of Spain. The authorities cited in the briefs show that the motive of this reservation was the same as that for the exclusion of similar land from
185 the public domain legislation of the United States. (Mann vs. Tacoma Land Co., 153 U. S. 273.) The better opinion appears to be that this reserved power did not pass even to viceroys by virtue of the nature of their office, in which they may be said to have exercised the royal prerogative; much less was it transmitted to governors-general or like subordinate officials, who did not possess the royal power, in its plenitude, by personal representation, but only such powers as were delegated to them. Consequently the grant in question was void. No prescription has run in its favor as against the State, which is entitled to the possession of the property and the petitioner's application should be wholly dismissed, with costs.

On this ground, I dissent.

Judgment affirmed.

186 On March 26th, 1908, counsel for petitioner and appellant excepted in writing to the decision of the Court.

On the same day counsel for appellant filed a motion for a rehearing, which was denied by the Court on the following day. To the order of the Court denying such petition, counsel duly excepted on the same date.

On March 30th, 1908, the Attorney-General of the Philippines excepted to the decision of the Supreme Court in the above entitled case.

On April 18, 1908, final judgment was entered, which said final judgment is in the words and figures following, towit:

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

JOAQUIN JOVER Y COSTAS, Plaintiff and Appellant,
vs.
THE INSULAR GOVERNMENT OF THE PHILIPPINES and THE CITY OF MANILA, Defendants and Appellees.

Judgment. April 18, 1908. Judgment Book 5, p. —, Docket No. 2674.

This Court having regularly acquired jurisdiction to decide the above entitled cause, which was submitted by both parties, and after consideration by the Court upon the record and proceedings, its decision and order for judgment having been filed March 25th, 1908.

By virtue thereof, it is hereby ordered that the judgment appealed from the Court of Land Registration, dated April 18th, 1905, be, and the same is hereby affirmed, without special order as to costs.

187 It is also ordered that * * * recover from * * * the sum of * * * as costs.

[SUPREME COURT SEAL.]

(Signed) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

On April 20, 1908, counsel for petitioner and appellant excepted in writing to the final judgment.

On April 27th, 1908, attorney for petitioner and appellant presented the following prayer of appeal and assignment of errors:

188 R. G. No. 2674.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

[Seal Supreme Court of the Philippines. Filed Apr. 27, 1908. Clerk's Office.]

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,
versus
EL GOBIERNO INSULAR Y LA CUIDAD DE MANILA, Op-ositors and Appellees.

Comes Joaquin Jover y Costas, petitioner and appellant in the above entitled cause and represents:

I.

That judgment has been rendered in said cause by which the judgment of the Court of Land Registration against the petitioner and appellant, has been confirmed, in violation of the Philippine Bill, as appears from the accompanying assignment of errors.

II.

The value of the controversy in said case is more than twenty-five thousand dollars.

Wherefore, petitioner and appellant prays that he be granted an appeal from the Supreme Court of the United States to the Supreme Court of the Philippine Islands with a *supersedeas* of the judgment upon the execution and approval of a bond in such sum as
188½ may be deemed sufficient, conditioned as required by law, pending such appeal, in order that the judgment may be revised by the Supreme Court of the United States upon the assignment of errors presented with this petition.

He also prays that the record of the cause be ordered translated from Spanish to English in conformity with the rule prescribed by the Supreme Court of the United States.

W. A. KINCAID,
Attorney for Petitioner.

189 In the Supreme Court of the United States.

[Seal Supreme Court of the Philippines. Filed Apr. 27, 1908. Clerk's Office.]

In the Matter of the Petition of JOAQUIN JOVER Y COSTAS, Plaintiff in Error,
versus
EL GOBIERNO INSULAR and LA CIUDAD DE MANILA, Defendants in Error.

Assignment of Errors.

Comes Joaquin Jover y Costas and says that in the record and proceedings in the above entitled cause, there is manifest error in this, to-wit:

I.

The Court erred in finding that the concession was not an absolute concession of an extension of two hundred brazas in length, by one hundred in width in the place therein described.

II.

The Court erred in finding that even upon the hipothesis that the concession was a conditional one, the condition was not complied with.

III.

The Court erred in finding that the concession was only of the extension "which might be fil-ed in or come to be filled in within those (the) limits" of the concession.

190

IV.

The Court erred in holding that a Spanish concession of lands could be defeated after the Treaty of Paris, because of the existence of a condition in said concession and that the inscription in the Registry of Property could be cancelled.

V.

The decision of the Court is in conflict with the following provisions of the Treaty of Paris:

"In conformity with the provisions of Articles I, II, and III of this treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other islands in the West Indies, in the island of Guam, and in the Philippine Archipielago, all the buildings, wharves, barracks, forts, structures, public highways and other immovable property which, in conformity with law, *belong to the public domain*, and *as such belong to the Crown of Spain*."

"And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, *cannot in any respect impair the property or rights* which by law *belong to the peaceful possession of property of all kinds*, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, *or of private individuals, of whatsoever nationality such individuals may be*."

"Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event *all their rights of property*, including the right to sell or dispose of such property or of its proceeds: * * *."

VI.

The decision of the Court deprives the applicant and appellant of his property without due process of law.

191

VII.

In view of the evidence presented at the trial, the Court erred in not rendering judgment in favor of the applicant and appellant.

Wherefore, said Joaquin Jover y Costas prays that the judgment of the Supreme Court of the Philippine Islands be reversed and the cause returned to this Court with instructions to render judgment against the opponents and appellees.

W. A. KINCAID,
Attorney for Appellant.

On April 27th, 1908, the attorney for appellant filed the following motion:

192 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 2674.

[Stamped:] Supreme Court of the Philippines. Clerk's Office. Filed Apr. 27, 1908 — M.

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,
versus
EL GOBIERNO INSULAR and LA CIUDAD DE MANILA, Oppositors and Appellees.

Now comes Joaquin Jover y Costas, appellant, in this Court and in view of the appeal allowed herein, prays that the Court:

I.

Make a separate and distinct finding of the facts upon which the judgment of the Court is based.

II.

That the conclusions of law upon which the judgment is based be separately stated.

Manila April 27, 1908.

W. A. KINCAID,
Attorney for Petitioner.

On April 29th, 1908, the Hon Florentino Torres made the following order:

193 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 2674.

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,
vs.
THE INSULAR GOVERNMENT and THE CITY OF MANILA, Defendants and Appellees.

Order.

The judgment of the court below having been affirmed by this Court without stating any new grounds therefore, it is to be understood that the appellate court has accepted the conclusions of fact

and law of the trial court. The petitioner and appellant will accordingly abide by the decision of this Court as it stands.

Manila, P. I., April 29, 1908.

(Signed) FLORENTINO TORRES,
Associate Justice of the Supreme Court,
Acting in Vacation.

On the same date, towit, April 29, the Hon. Florentino Torres made the following order allowing the appeal, towit:

194 On April 29, 1908, the Honorable Florentino Torres allowed the appeal prayed for in the following order:

In the Supreme Court of the Philippine Islands.

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,
versus
EL GOBIERNO INSULAR and LA CIUDAD DE MANILA, Opositors and Appellees.

[Stamped:] Supreme Court of the Philippines. Clerk's Office. Filed Apr. 29, 1908. — M.

The appeal is allowed and it shall operate as a *supersedeas* of the judgment complained of, upon the execution of a bond by Joaquin Jover y Costas, in the sum of two thousand pesos, payable to the appellees, conditioned as required by law, to be approved by me pending such appeal.

FLORENTINO TORRES,
Associate Justice of the Supreme Court
of the Philippine Islands.

On the same date, towit, April 29th, 1908, a citation was issued to the Attorney General of the Philippine Islands in the words and figures following, towit:

195 UNITED STATES OF AMERICA, *ss:*

To the Hon. Attorney General of the Philippine Islands:

You are hereby cited and admonished to be in and appear at the Supreme Court of the United States, to be holden at Washington, within one hundred and twenty days from the date of this citation, pursuant to an appeal filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein Joaquin Jover y Costas, appellants, and the Insular Government and the City of Manila, appellees, to show cause if any there be, why the judgment in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, this 29 day of April, in the year of Our Lord, 1908.

FLORENTINO TORRES,
Associate Justice of the Supreme Court of the Philippine Islands.

I admit the receipt of a copy of the above citation and accept service thereof as though regularly had this 2 day of May, 1908.

GREGORIO ARANETA,
R. D. B.,
Attorney for the Defendants in Error.

196 On April 27th, 1908, the attorney for the petitioner and appellant filed the following petition for a writ of error, filing therewith his assignments of error:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 2674.

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,
versus
EL GOBIERNO INSULAR Y LA CUIDAD DE MANILA, Op-ositors and Appellees.

[Stamped:] Supreme Court of the Philippines. Clerk's Office. Filed Apr. 27, 1908. — M.

Comes Joaquin Jover y Costas, petitioner and appellant in the above entitled cause and represents:

I.

That judgment has been rendered in said cause by which the judgment of the Court of Land Registration against the petitioner and appellant, has been confirmed, in violation of the Philippine Bill, as appears from the accompanying assignment of errors.

II.

The value of the controversy in said case is more than twenty-five thousand dollars.

Wherefore, petitioner and appellant prays that he be granted a *writ of error* from the Supreme Court of the United States to the Supreme Court of the Philippine Islands with a *supersedeas* of the judgment upon the execution and approval of a bond in such
197 sum as may be deemed sufficient, conditioned as required by law, pending such *writ of error*, in order that the judgment may be revised by the Supreme Court of the United States upon the assignment of errors presented with this petition.

He also prays that the record of the cause be ordered translated from Spanish to English in conformity with the rule prescribed by the Supreme Court of the United States.

W. A. KINCAID,
Attorney for Petitioner.

198 In the Supreme Court of the United States.

In the Matter of the Petition of JOAQUIN JOVER Y COSTAS, Plaintiff in Error,
versus
EL GOBIERNO INSULAR and LA CIUDAD DE MANILA, Defendants in Error.

[Stamped:] Supreme Court of the Philippines. Clerk's Office. Filed Apr. 27, 1908. — M.

Assignment of Errors.

Comes Joaquin Jover y Costas and says that in the record and proceedings in the above entitled cause, there is manifest error in this, to-wit:

I.

The Court erred in finding that the concession was not an absolute concession of an extension of two hundred brazas in length, by one hundred in width in the place therein described.

II.

The Court erred in finding that even upon the hipothesis that the concession was a conditional one, the condition was not complied with.

III.

The Court erred in finding that the concession was only of the extension "which might be fil-ed in or come to be filled in within those (the) limits" of the concession.

199 V.

The Court erred in holding that a Spanish concession of lands could be defeated after the Treaty of Paris, because of the existence of a condition in said concession and that the inscription in the Registry of Property could be cancelled.

V.

The decision of the Court is in conflict with the following provisions of the Treaty of Paris:

"In conformity with the provisions of Articles I, II, and III of this treaty, Spain relinquishes in Cuba, and cedes in Porto Rico

and other islands in the West Indies, in the island of Guam, and in the Philippine Archipielago, all the buildings, wharves, barracks, forts, structures, public highways and other immovable property which, in conformity with law, *belong to the public domain, and as such belong to the Crown of Spain.*"

"And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, *cannot in any respect impair the property or rights* which by law *belong to the peaceful possession of property of all kinds*, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, *or of private individuals, of whatsoever nationality such individuals may be.*"

"Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, *retaining* in either event *all their rights of property*, including the right to sell or dispose of such property or of its proceeds: * * *"

VI.

The decision of the Court deprives the applicant and appellant of his property without due process of law.

200 VII.

In view of the evidence presented at the trial, the Court erred in not rendering judgment in favor of the applicant and appellant.

Wherefore, said Joaquin Jover y Costas prays that the judgment of the Supreme Court of the Philippine Islands be reversed and the cause returned to this Court with instructions to render judgment against the opponents and appellees.

W. A. KINCAID,
Attorney for Plaintiff in Error.

On the 27th day of April, 1908, the petitioner and appellant, through his attorney, presented the following motion:

201 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 2674.

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,
contra
EL GOBIERNO INSULAR Y LA CIUDAD DE MANILA, Opositors and Appellees.

[Stamped:] Supreme Court of the Philippines. Clerk's Office. Filed Apr. 27, 1908. — M.

Now comes Joaquin Jover y Costas, appellant, in this Court and in view of the *writ of error* allowed herein, prays that the Court:

I.

Make a separate and distinct finding of the facts upon which the judgment of the Court is based.

II.

That the conclusions of law, upon which the judgment is based be separately stated.

Manila April 27, 1908.

W. A. KINCAID,
Attorney for Appellant.

On April 29th, 1908, Hon. Florentino Torres made the following order:

202 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 2674.

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,
vs.
THE INSULAR GOVERNMENT and THE CITY OF MANILA, Defendants and Appellees.

Order.

The judgment of the court below having been affirmed by this Court without stating any new grounds therefore, it is to be understood that the appellante court has accepted the conclusions of fact and law of the trial court. The petitioner and appellant will accordingly abide by the decision of this Court as it stands.

Manila, P. I., April 29th, 1908.

(Signed) FLORENTINO TORRES,
Associate Justice of the Supreme Court,
Acting in Vacation.

On the 29th day of April, 1908, the following writ of error was allowed by the Hon. Florentino Torres, towit:

203 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the Philippine Islands, before you, or some of you, between Joaquin Jover y Costas, petitioner and appellant, and the Insular Government and the City of Manila, op-ositors and appellees, a manifest error hath happened to the great damage of the said Joaquin Jover y Costas, as by *their* complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy —, *we* command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the — day of ——, 1908, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected
204 the said Supreme Court may cause further to be done therein — correct that error, what of right, and according to the law and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 29th day of April in the year of Our Lord, 1908.

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

The foregoing *writ of error* is allowed and it shall operate as a *supersedeas* of the judgment complained of, upon the execution of a bond by Joaquin Jover y Costas, in the sum of two thousand pesos payable to the defendants in error, conditioned as required by law, to be approved by me pending such *writ of error*.

FLORENTINO TORRES,
Associate Justice of the Supreme Court of the Philippine Islands.

205 UNITED STATES OF AMERICA, *ss:*

To the Hon. Attorney General of the Philippine Islands:

You are hereby cited and admonished to be in and appear at the Supreme Court of the United States, to be holden at Washington, within one hundred and twenty days from the date of this citation, pursuant to a *writ of error* filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein Joaquin Jover y Costas, plaintiff in error, and the Insular Government and the City of Manila, defendants in error, to show cause if any there be, why the judgment in said *writ of error* mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 29th day of April in the year of Our Lord, 1908.

FLORENTINO TORRES,
Associate Justice of the Supreme Court of the Philippine Islands.

I admit the receipt of a copy of the above citation and accept service thereof as though regularly had this 2 day of May, 1908.

GREGORIO ARANETA,
R. D. B.,
Attorney for the Defendants in Error.

206 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

JOAQUIN JOVER & COSTAS, Petitioner and Appellant,
vs.
THE INSULAR GOVERNMENT and THE CITY OF MANILA, Oppositors and Appellees.

It is hereby stipulated by and between the parties hereto that the Clerk of the Supreme Court of the Philippine Islands may make one single and complete transcript of the record in the above-entitled action for his return to the writ of error and appeal allowed in the above-entitled cause on behalf of the petitioner and appellant, and that the same transcript of record shall likewise serve upon the writ of error sued out in the above-entitled action on behalf of the oppositors and appellees, and that the record so made shall be considered as though it had been made separately and specially for each of the remedies aforesaid.

(Sgd.) GREGORIO ARANETA.
Attorney-General, Attorney for Oppositors and Appellees.
(Sgd.) W. A. KINCAID, G. N. H.,
Attorney for Petitioner and Appellant.

207 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Case No. 2674.

JOAQUIN JOVER Y COSTAS, Plaintiff and Respondent,
vs.
THE GOVERNMENT OF THE PHILIPPINE ISLANDS and THE CITY OF MANILA, Defendants and Appellants.

[Stamped:] Supreme Court of the Philippines. Clerk's Office. Filed May 5, 1908, — M.

Petition for Writ of Error.

And now comes Gregorio Araneta, Attorney-General for the Philippine Islands, for and on behalf of the Government of the Philippine Islands, defendant and appellant in the above-entitled action, and alleges that on the 18th day of April, 1908, the Supreme Court of the Philippine Islands entered a judgment in the above-entitled action in favor of the plaintiff and respondent, and against the defendant and appellant, in which judgment and the proceedings had prior thereto in this case certain errors were committed to the prejudice of the defendant; all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, The defendant prays that a writ of error may issue

in his behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States.

(Sigd.) GREGORIO ARANETA,
Attorney-General, Attorney for Defendant.

208 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Case No. 2674.

JOAQUIN JOVER Y COSTAS, Plaintiff and Respondent,
vs.
THE GOVERNMENT OF THE PHILIPPINE ISLANDS and THE CITY OF MANILA, Defendants and Appellants.

Assignment of Errors.

The defendant in the above-entitled action, in connection with its petition for a writ of error, makes the following assignment of errors upon which it will rely for the prosecution of the writ of error in the Supreme Court of the United States in the above-entitled action:

1. The Court erred in deciding that the question at issue between the parties was solely whether the grant of the land in question, made by the Spanish Government, had become extinct and whether such land had wholly passed to the applicant, Joaquin Jover y Costas.

2. The Court erred in not holding and deciding that the grant made by the Governor-General of the Philippine Islands of the land in question to Don José Camps was null and void.

3. Conceding that the grant in question made to José Camps was valid, the Court erred in not holding and deciding that the whole grant was made upon conditions and with the limitations set
209 forth in the grant decree, especially that the whole land so granted should be filled in and that the grant should only be effective upon the condition precedent.

4. The Court erred in not holding that the grant made to José Camps had become null and void because of the failure of the grantee to fulfill the conditions of the grant by not filling in the whole of the land so granted.

5. The Court erred in holding that the registration of the land in question in the registry of property was valid as to a portion of the same and not null and void as to the whole.

6. The Court erred in confirming the registration of a portion of the land in question.

7. The Court erred in confirming the judgment of the Court of Land Registration.

Dated this 5 day of May, Nineteen Hundred and Eight.

(Sd.) GREGORIO ARANETA,
Attorney-General.

210 *Original.*

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Case No. 2674.

JOAQUIN JOVER Y COSTAS, Plaintiff and Respondent,
vs.
THE GOVERNMENT OF THE PHILIPPINE ISLANDS, and THE CITY OF MANILA, Defendants and Appellants.

Order Allowing Writ of Error.

This 5th day of May, 1908, comes the defendant, by Gregorio Araneta, Attorney-General, its attorney, and files herein and presents to the court his petition, praying for the allowance of a writ of error and assignment of errors intended to be urged by him; praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof, The court does allow this writ of error, and, it appearing that the defendant herein is the Government of the Philippine Islands, no bond shall be required of the defendant herein to cover the costs of said action, and that this writ shall act as a supersedeas.

FLORENTINO TORRES,
Associate Justice, Supreme Court of the Philippine Islands.

211 *Original.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a case which is in the said court, or before some of you, wherein Joaquin Jover y Costas appears as plaintiff, and The Government of the Philippine Islands and the City of Manila as defendants, a manifest error has happened, to the great damage of the said Government of the Philippine Islands and City of Manila, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the defendants aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and

openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 2nd day of September next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct their error where of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 5th day of May in the year of our Lord
212 One Thousand Nine Hundred and Eight.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court
of the Philippine Islands,
By R. HERAS,
Deputy Clerk.

The foregoing writ of error is allowed.

FLORENTINO TORRES,
Associate Justice of the Supreme
Court of the Philippine Islands.

213 UNITED STATES OF AMERICA, *ss:*

To Joaquin Jover y Costas, Plaintiff, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States to be holden at the City of Washington on the 2nd day of September next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein the Government of the Philippine Islands is plaintiff in error and Joaquin Jover y Costas is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and speedy justice be done to him in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 5th day of May, in the year of our Lord One Thousand Nine Hundred and Eight.

[Seal Corte Suprema, Islas Filipinas.]

FLORENTINO TORRES,
Associate Justice of the Supreme
Court of the Philippine Islands.

Receipt of the above citation is hereby admitted, and service thereof accepted this 5th day of May, 1908.

Por W. A. KINCAID,
ROBERTA MORENOF.

214 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Case No. 2674.

JOAQUIN JOVER Y COSTAS, Plaintiff and Respondent,
vs.
THE GOVERNMENT OF THE PHILIPPINE ISLANDS, and THE CITY OF MANILA, Defendants and Appellants.

[Stamped:] Supreme Court of the Philippines. Clerk's Office. Filed May 5, 1908, — M.

Petition for Allowance of Appeal.

And now comes Gregorio Araneta, Attorney-General for the Philippine Islands, for and on behalf of the Government of the Philippine Islands, defendant and appellant in the above-entitled action, and alleges that on the 18th day of April, 1908, the Supreme Court of the Philippine Islands entered a judgment in the above-entitled action in favor of the plaintiff and respondent, and against the defendant and appellant, in which judgment and the proceedings had prior thereto in this case certain errors were committed to the prejudice of the defendant; all of which will more in detail appear from the assignment of errors which is filed with this petition.

And it further appearing that a writ of error has been granted in the above-entitled action on behalf of the defendants and appellants out of the Supreme Court of the United States for the correction of the errors complained of therein, and there being doubt and uncertainty as to the legal remedy in this case, now,

214½ Therefore, The defendant prays that an order be entered allowing an appeal in the above-entitled action from the judgment therein from the Supreme Court of the Philippine Islands to the Supreme Court of the United States for the correction of the errors complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States.

(Sgd.) GREGORIO ARANETA,
Attorney-General, Attorney for Defendants.

215 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Case No. 2674.

JOAQUIN JOVER Y COSTAS, Plaintiff and Respondent,
vs.
THE GOVERNMENT OF THE PHILIPPINE ISLANDS, and THE CITY OF MANILA, Defendants and Appellants.

Assignment of Errors.

The defendant in the above-entitled action, in connection with its petition for a writ of error, makes the following assignment of errors upon which it will rely for the prosecution of the writ of error in the Supreme Court of the United States in the above-entitled action:

1. The Court erred in deciding that the question at issue between the parties was solely whether the grant of the land in question, made by the Spanish Government, had become extinct and whether such land had wholly passed to the applicant, Joaquin Jover y Costas.

2. The Court erred in not holding and deciding that the grant made by the Governor-General of the Philippine Islands of the land in question to Don José Camps was null and void.

3. Conceding that the grant in question made to José Camps was valid, the Court erred in not holding and deciding that the whole grant was made upon conditions and with the limitations set
216 forth in the grant decree, especially that the whole land so granted should be filled in and that the grant should only be effective upon the condition precedent.

4. The Court erred in not holding that the grant made to José Camps had become null and void because of the failure of the grantee to fulfill the conditions of the grant by not filling in the whole of the land so granted.

5. The Court erred in holding that the registration of the land in question in the registry of property was valid as to a portion of the same and not null and void as to the whole.

6. The Court erred in confirming the registration of a portion of the land in question.

7. The Court erred in confirming the judgment of the Court of Land Registration.

Dated this 5 day of May, Nineteen Hundred and Eight.

(Sd.) GREGORIO ARANETA,
Attorney-General.

217 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Case No. 2674.

JOAQUIN JOVER Y COSTAS, Plaintiff and Respondent.
vs.
THE GOVERNMENT OF THE PHILIPPINE ISLANDS, and THE CITY OF MANILA, Defendants and Appellants.

Order Allowing an Appeal.

This 5th day of May, 1908, comes the defendant, by Gregorio Araneta, Attorney-General, its attorney, and files herein and presents to the court his petition, praying for an order granting an appeal to the Supreme Court of the United States in the above-entitled action and having filed an assignment of errors intended to be urged by him; and praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Supreme Court, and that such other further proceedings may be had as are proper in the premises; and it further appearing that a writ of error has issued in behalf of the said defendant and appellant out of the Supreme Court of the United States for the correction of the errors complained of, and there being a doubt as to the proper remedy for the correction of such errors, now, therefore,

On consideration whereof, The court does allow this appeal from the said judgment entered therein; and it appearing that
218 the defendant herein is the Government of the Philippine Islands no bond shall be required of the defendant herein to cover the costs of the said action, and that this order of appeal shall act as a supersedeas.

FLORENTINO TORRES,
Associate Justice of the Supreme Court of the Philippine Islands.

219 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a case which is in the said court, or before some of you, wherein Joaquin Jover y Costas, appears as plaintiff, and The Government of the Philippine Islands and the City of Manila as defendants, a manifest eror has happened, to the great damage of the said Government of the Philippine Islands and City of Manila, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done

to the defendants aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this order, so that you may have the same at Washington on the 2nd day of September next, in the said Supreme court to be then and -here held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct their error where of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of
220 the United States this 5th day of May in the year of our Lord One Thousand Nine Hundred and Eight.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court
of the Philippine Islands.
By R. HERAS,
Deputy Clerk.

The foregoing appeal is allowed.

FLORENTINO TORRES,
Associate Justice of the Supreme Court
of the Philippine Islands.

221 UNITED STATES OF AMERICA, *ss:*

To Joaquin Jover y Costas, Plaintiff, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States, to be holden in the City of Washington, on the 2nd day of September next, pursuant to an order of appeal in the above-entitled action filed in the clerk's office of the Supreme Court of the United States wherein the Government of the Philippine Islands is appellant and Joaquin Jover y Costas is respondent, and there to defend the above-entitled action and to show cause why the judgment rendered against the said appellant should not be corrected and speedy justice done to him in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 5th day of May, in the year of our Lord One Thousand Nine Hundred and Eight.

[Seal Corte Suprema, Islas Filipinas.]

FLORENTINO TORRES,
Associate Justice of the Supreme Court
of the Philippine Islands.

Receipt of the above citation is hereby admitted, and service thereof accepted this 5th day of May, 1908.

Por W. A. KINCAID.
ROBERTO MORENO.

222 On August 4, 1908, the attorneys for the petitioner and appellant filed the following petition:

R. G. No. 2674.

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS and THE CITY OF MANILA, Defendants and Appellants.

Now comes the appellant, through his attorneys, Kincaid & Hurd, and asks the court to grant him an enlargement of time of forty-five days for docketing the transcript of the record in this case in the Office of the Clerk of the Supreme Court of the United States.

Manila, August 4th, 1908.

(Signed) KINCAID & HURD.
Attorneys for Petitioner and Appellant.

Received copy this 4th day of August, 1908.

(Signed) GEORGE R. HARVEY,
Solicitor-General.

On August 6, 1908, the Hon. Florentino Torres, who allowed the appeal, made the following order:

223 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS and THE CITY OF MANILA, Respondents and Appellants.

Upon petition of the Attorneys for the Petitioner and Appellant, a copy of the same having been duly served upon the Solicitor-General of the Philippine Islands, and for good cause shown, the time for the filing of the transcript of the record and proceedings in the above entitled cause with the Clerk of the Supreme Court of the United States, is hereby enlarged so as not to expire until forty-five (45) days after the second day of September, 1908.

Manila, August 6, 1908.

FLORENTINO TORRES,
Associate Justice of the Supreme Court of the Philippine Islands, who Allowed the Appeal.

224 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,
versus
THE INSULAR GOVERNMENT and THE CITY OF MANILA, Oppositors and Appellees.

Bond.

Know all men by these presents, That we Joaquin Jover y Costas as principal, and Miguel Plá and Andres Marroig as sureties, all of the City of Manila, are held and firmly bound unto the above name-The Insular Government and The City of Manila, in the sum of Two thousand pesos to be paid the said The Insular Government and The City of Manila, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the 29th day of April in the year of our Lord 1908. Whereas, the above-named Joaquin Jover y Costas has prosecuted a writ of error to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit, by the Supreme Court of the Philippine Islands.

Now, therefore, the condition of this obligation is such, that if the above-named Joaquin Jover y Costas shall prosecute said writ of error to effect and answer all damages and costs, if he fail to make said writ of error good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

225 In witness whereof, we have executed this instrument this 29th day of April, A. D., 1908.

JOAQUIN JOVER Y COSTAS,
(Sgd.) By W. A. KINCAID,
His Attorney, for Joaquin Jover y Costas.
(Sgd.) MIGUEL PLÁ.
(Sgd.) ANDRES MARROIG.

Aprobada.

FLORENTINO TORREZ,
Magistrado de Turno de la Corte Supreme, I. F.

PHILIPPINE ISLANDS,
City of Manila:

Before me, the undersigned authority on this day personally appeared Juan Soler, for himself and as attorney in fact of Joaquin Jover y Costas, and Miguel Plá and Andres Marroig, who being first duly sworn on oath say that they are the persons who executed the foregoing bond; that they are solvent and the owners of real property in the Philippine Islands, and that each of them is the owner of

property of the value stated in said bond exclusive of all his debts and obligations and exclusive of property exempt from execution.

(Sgd.) MIGUEL FLÁ.
(Sgd.) ANDRES MARROIG.

Subscribed and sworn to before me this 30th day of April, A. D., 1908. Said affiants presented their respective cedulas No. F. 1324021 issued March 11, 1908, and No. F. 109806 issued January 6, 1908.

(Sgd.) ROBERTO MORENO,
Notario Publico, el Nombramiento Termina el 31 *de Diciembre de* 1908.

226 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

JOAQUIN JOVER Y COSTAS, Petitioner and Appellant,
versus
THE INSULAR GOVERNMENT and THE CITY OF MANILA, Op-ositors and Appellees.

Bond.

Know all men by these presents, That we Joaquin Jover y Costas as principal, and Miguel Plá and Andres Marroig as sureties, all of the City of Manila, are held and firmly bound unto the above name- The Insular Government and The City of Manila, in the sum of two thousand pesos to be paid the said The Insular Government and The City of Manila, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the 29th day of April in the year of our Lord 1908. Whereas, the above named Joaquin Jover y Costas has prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit, by the Supreme Court of the Philippine Islands.

Now, therefore, the condition of this obligation is such, that if the above named Joaquin Jover y Costas shall prosecute said
227 appeal to effect and answer all damages and costs, if he fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

In witness whereof, we have executed this instrument this 29 day of April, A. D., 1908.

JOAQUIN JOVER Y COSTAS,
By W. A. KINCAID,
His Attorney, for Joaquin Jover y Sostas.
(Sgd.) MIGUEL PLA.
" A. MORROIG.

Aprobada:
(Sgd.) FLORENTINO TORRES,
Magistrado de Turno de la Corte Suprema, I. F.

PHILIPPINE ISLANDS,
City of Manila:

Before me, the undersigned authority on this day personally appeared Juan Soler, for himself and as attorney in fact of Joaquin Jover y Costas, and Miguel Pla and Andres Marroig, who being first duly sworn on oath say that they are the persons who executed the foregoing bond; that they are solvent and the owners of real property in the Philippine Islands, and that each of them is the owner of property of the value stated in said bond exclusive of all his debts and obligations and exclusive of property exempt from execution.

(Sgd.) MIGUEL PLA.
" A. MARROIG.

Subscribed and sworn to before me this 30 day of April, A. D., 1908. Said affiants presented their respective cedulas No. F. 1324021 issued March 11, 1908, and No. F. 109806 issued January 6, 1908.

(Sgd.) ROBERTO MORENO,
Notario Publico, el Nombramiento Termina el 31 *de Diciembre de* 1908.

228 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing 227 pages constitute a true and correct translation of the transcript of the record in the case of Joaquin Jover y Costas, plaintiff in error and appellant, vs. The Insular Government of the Philippine Islands and The City of Manila, defendants in error and appellants, including the original writs of error and allowance thereof, original allowances of appeal and citations issued thereunder, copies of writ of error and appeal bonds, and a blue-print plan.

In witness whereof, I hereunto affix the seal of the said Supreme Court of the Philippine Islands, and sign these presents in the City of Manila, P. I., this first day of September, 1908.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk Supreme Court of the Philippine Islands.

Endorsed on cover: File No. 21,439. Philippine Islands, Supreme Court. Term No. 309. Joaquin Jover y Costas, appellant and plaintiff in error, vs. The Insular Government of the Philippine Islands and The City of Manila. File No. 21,440. Term No. 310. The Insular Government of the Philippine Islands and The City of Manila, appellants and plaintiffs in error, vs. Joaquin Jover y Costas. Filed December 12th, 1908. File No. 21,439 and 21,440.

Office Supreme Court, U. S.
FILED.
APR 4 1911
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 112.

JOAQUIN JOVER Y COSTAS, APPELLANT AND PLAINTIFF IN ERROR,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE CITY OF MANILA.

No. 113.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE CITY OF MANILA, APPELLANTS AND PLAINTIFFS IN ERROR,

vs.

JOAQUIN JOVER Y COSTAS.

REPLY BRIEF FOR JOAQUIN JOVER Y COSTAS, APPELLANT AND PLAINTIFF IN ERROR.

W. A. KINCAID,
ALDIS B. BROWNE,
ALEXANDER BRITTON,
J. H. BLOUNT,
EVANS BROWNE,
Attorneys for Joaquin Jover y Costas, Appellant and Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 112.

JOAQUIN JOVER Y COSTAS, APPELLANT AND PLAINTIFF IN ERROR,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE CITY OF MANILA.

No. 113.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE CITY OF MANILA, APPELLANTS AND PLAINTIFFS IN ERROR,

vs.

JOAQUIN JOVER Y COSTAS.

REPLY BRIEF FOR JOAQUIN JOVER Y COSTAS, APPELLANT AND PLAINTIFF IN ERROR.

I.

This cause was brought to this court both by appeal and writ of error and docketed here before the decision in *Tiglao vs. Insular Government of the*

Philippine Islands, 215 U. S., 410, wherein it was ruled that review of the judgments rendered in cases arising in the Court of Land Registration (the instant case) should be had by writ of error. The findings of that court are adopted by the Supreme Court of the Islands (R., 103 and 108) on the petitioner's request for "separate and distinct " findings of fact upon which the judgment of the " court is based (R., 103 and 107-108).

In addition thereto, we assume that the facts disclosed by the pleadings—*i. e.*, the petition and attached proofs, including the full copy of the grant (R., 2 and 58), may certainly be considered as part of the record on review by writ of error here.

II.

Proposition II of the Government's brief (p. 7) is that the grant of the Spanish Governor-General of 1859, on which we rely, was void because that official had no authority to make the grant. The Attorney-General divides his reasons for claiming that our grant is void under four heads. First, he insists, on page 8 of his brief, that the laws of the Indies relied upon by us applied only to Viceroys and not to Captains-General. The brunt of the battle in the court below clearly appears to have been on the point whether the deed was conditional or not. Apparently nobody at the Manila end of this controversy seriously insisted that the Spanish Governor-General did not

have general plenary authority to make grants of land to individuals in the interest of such individuals and of the community of which they were members. The Court of Land Registration, in its decision (R., 67) speaks of the land in question as "granted by the Spanish Government" to the man under whom we claim, José Camps, referring to it thus apparently as a legal fact which had been taken as a matter of course in the argument before him. He refers more than once in his said decision (R., 67-8) to our grant as having been made "by the Spanish Government." This contention that the Spanish Governor-General was acting *ultra vires* does not appear to have been one which the learned counsel for the Government and the City of Manila in the court below thought worth while to make any pretention of asking the Court of Land Registration at Manila to consider seriously. We suspect that the counsel for the Insular Government and the City of Manila considered the construction of the deed which they were able to get the trial court to give a legitimate cause for interchange of congratulations among themselves. We suspect that they would never have appealed this case if we had not. However, it was their duty, as it is the duty of counsel here, to raise all questions which, in their judgment, are at all debatable. Apparently their associate counsel below laid little or no stress upon the contention here made, that the Spanish Governor-General who signed the grant of 1859, upon which we rely, acted

ultra vires. The majority of the Supreme Court of the Philippines, in their four-line decision, affirming the judgment of the trial court, certainly commit themselves to the proposition that this was a grant "by the Spanish Government." It would ill become us to eulogize inordinately the brief of the Honorable W. A. Kincaid, our Manila associate counsel in the court below, but because Mr. Justice Johnston, in his dissenting opinion (R., 81), expresses himself as content to rest it on Judge Kincaid's brief, we cannot refrain from inviting the attention of this court by way of preliminary to the fact that both Judge Kincaid and Judge Johnston have been identified with the administration of justice at Manila since the founding of the American civil government there in 1901. This fact is amply evident from the reports of the Supreme Court of the Philippine Islands and other publications of that Government. We think it fairly inferable that the point now raised here in the Attorney-General's brief, that there was any difference between the authority of the personal representative of the Spanish King in Spain's Western Hemisphere colonies and his personal representative in her Eastern Hemisphere colonies in the matter of making land grants, was not seriously raised in the argument before the Supreme Court of the Philippine Islands. In adopting Judge Kincaid's argument (R., 95; see 10 Philippine Reports, p. 534) Mr. Justice Johnston, in quoting a certain piece of Spanish legisla-

tion concerning the Philippines, says it "always qualifies the Governor and Captain-General as Viceroy or President." These words are italicized in the opinion. Reference is also made in the opinion to another piece of Spanish legislation which he quotes as terming the Governors and Captains-General of the Philippines "royal vice-patrons" (R., 97). On the same page and the next one thereafter he also quotes from a law book by an eminent Spanish jurist, which, in discussing the office of Captain-General, refers to book 3, title 3, laws 3, 4, and 5 of the Laws of the Indies (fixing the powers of viceroys and the like), as fixing the powers of "independent governors such as that of the Philippines." If the Spanish or Spanish-speaking Filipino lawyers of distinction, who were connected with this case in the courts below, had made any point about the Governor-General of the Philippines not having the same authority to grant lands as a viceroy, certainly the matter would have been dealt with more at length in the dissenting opinion of Mr. Justice Johnston and the brief of Mr. Kincaid, the latter simply citing divers extracts from old Spanish laws showing the plenary power of the colonial personal representative of the Spanish King on the spot, no matter in which hemisphere. The conquests of Cortez and Pizarro preceded the taking of the fishing village of Manila by Ligaspi in 1571-72. It would have been an insult to the proud Castilian blood which flowed through the veins of the soldiers of fortune

who accomplished for Spain the conquest of Mexico and Peru, after making them viceroys over the fabulously wealthy empires they had conquered, to give an equally high-sounding title to the captor of a fishing village on one of the remote islands of the South Seas. But the bloody records of history adequately show that in the palmiest days of Spain's colonial empire, when Cross and Sword wandered together about the earth, seeking whom they might bring under their dominion, there was never any difficulty about her chief representative on the spot being clothed with full authority to give to his followers as much of the land he had just landed on as he chose.

In a brief history of the Philippines, prepared for the American census of the islands by a learned and accomplished Spanish-Filipino at the suggestion of (then) Governor Taft, the writer remarks in regard to this general subject, "The governors distributed the lands in encomiendas to their followers, and followed their own inclinations." *Volume* 1, *Philippine Census, page* 332. This learned historian, Señor Pardo de Tavera, a native of the Philippines, is a man of wide information and great learning, being the author of "Biblioteca Filipina" and other works to be found in the Congressional Library. Justice Johnston concludes his opinion with a quotation from this gentleman's history of the Philippines. It is preceded by a reference to a decision of the American Supreme Court of the Philippines, recognizing that the

Spanish Governor-General could even suspend the code, and that "no law can be invoked against a grant in the Philippines made by the Spanish King or by his viceroys." The language taken from Señor Pardo de Tavera's History as voicing the summation of his (Mr. Justice Johnston's) reasons for his faith that our grant was invulnerable is:

> "The powers given to a Governor of the Philippine Islands were practically unlimited."
>
> Philippine Census, Vol. I, p. 388.

As we said in our original brief on pages 11-12 thereof, it really seems like putting up a straw man for the purpose of knocking him down to waste time on the question of whether the Governor of the Philippines had any authority to make this grant, but it is our adversary, not ourselves, who is responsible for our taking up the time of the court in our valoriously charging, lance in rest, at windmills which the Attorney-General would have us believe to be armed men. In fact, having apparently given up about the only real points in the case, namely, those which deal with the construction of the grant, he now here before *this* court attacks, as a last resort, the validity of the grant itself as having been made *ultra vires*. The records of history make this contention obviously unsound. Who can successfully deny Spain's prodigal liberality in giving away land belonging to other people, especially where the "other people" were expected to impart to the land the only value it could

have by working it? With all respect we submit that the Attorney-General has read the laws of the Indies and the history of Spanish jurisprudence and colonization to very little purpose if he has failed to perceive that the key-note of Spain's colonial policy in such matters was to provide the personal representative of the King with every facility for making conquered territory profitable by getting land having potential value into the possession and private ownership of intelligent persons "on the spot." The brief of our distinguished adversary shows him to be laboring under the delusion that the Captain-General of the Philippines actually reported to the South American viceroy instead of direct to the King. For instance, on pages 9-10 of his brief, in speaking of the viceroys of Peru and New Spain, he remarks, "None other was established by the laws of the Indies." On page 14 of his brief he insists that the jurisdiction of these viceroys "extended over all of the Indies, divided into two kingdoms of Peru and New Spain," having previously explained that the Philippine Islands were included in New Spain. In fact, on page 15, he insists that under law 2, title 2, book 3, of the laws of the Indies, the Royal Audiencias (in which he is endeavoring to include the Philippines) "were subject to the authorities of the respective viceroys."

The story of the exploits of the daring navigators who made Spain a world power, is so universally familiar and so pertinent here, that we can-

not refrain from a moment's allusion to the subject. Magellan's voyage of discovery to the Philippines in 1519, or thereabouts, like that of Columbus to America in 1492, was preceded by difficulties to get some one to back the enterprise. Is it reasonable to suppose that men bent on conquest which was to combine pecuniary gain with glory and eternal salvation, could be induced to undertake perilous voyages to the Far East in pursuit of those purposes, when rival successful adventurers in South America, whose achievements they were emulating, were to control them? The industry of our adversary in this case has been rewarded with but one instance of any attempt on the part of the viceroy of New Spain, *alias* Mexico, to interfere with affairs in the Philippines. On page 16 of the Government's brief, we find a citation from book 2, title 15, law 58 of the laws of the Indies, from which it appears that the Government at Madrid, having discovered that the viceroys of New Spain had been appointing Governors *pro tem.* for the Philippines from among the Spanish contingent resident at Manila, which appointees would thus have their hands on the Government purse strings until superseded by the regular captains-general sent out by proper authority, put a stop to the practice and commanded the viceroy of New Spain "to cease exercising the powers, etc." The law quoted from is relied on by the Attorney-General to show that "the authority and hierarchy

of" the viceroys was greater than that of the captains-general. If all the counsel wants us to admit is that a viceroy was a bigger man than a captain-general, we here and now freely admit it, but we deny that a viceroy had any freer hand in giving away to his followers the patrimony of the Aztecs, than a captain-general had in rewarding his followers with the lands of the Malay fishermen. As a matter of fact the Government's brief, on page 18, cites from book 2, title 2, law 15, of the laws of the Indies, the part of that compilation which regulates affairs in the Far East, which is entirely separate from the part of the same compilation which regulates affairs in the Western Hemisphere. No general language could confer more plenary authority when taken in connection with the contexts alluded to. Among other things this law recites that the captain-general is to be president of the Royal Audiencia at Manila and is to "hold *exclusively* the superior civil government of the whole district" and further that he is to have authority to "grant those favors" which he "may and ought to make." Spain was a great success as a colonizer. She gave her pioneers unlimited authority and asked no questions so long as they kept the royal treasury in a plethoric condition. Our adversary appears to think that to make an official the head of the government of a colony held by a nation whose colonial policy and practice had already been crystallized in previous legislation with

regard to earlier colonies in South America, was not sufficient to make such appointee feel justified in making grants of land. Land-grant matters had already been dealt with in the laws relating to Peru and New Spain in this same compilation called the "Recopilacion." Why repeat all details in the part dealing with the King's representative at Manila? In fixing his authority to grant favors, this book 2, title 15, law 11 simply says that he must be guided by "the laws of this compilation * * * the service of God and our own interests, and the peace and tranquillity," etc. In our main brief we cite laws containing terms giving plenary authority. Our adversary insists that the burden is on us to show that they were "specially authorized" to make land grants. The trouble about his contention is that Rodriguez San Pedro, on page 65 of volume I of his Legislasion Ultramarina (a work approved as authority by the royal order appearing at its front), makes it clear that as to the colonial governors who were presidents of Audiencias (R., 84) "in the provinces under their command, and in all cases and matters not specially excepted, they have and exercise the same powers as the King appointing them, and this jurisdiction was ordinary rather than conferred." Clearly the translation is crude. What it means is that in the natural sequence of events and the orderly development of colonial policy the authority vested in an adventurous discoverer was on the spot precisely

that of the sovereign he represented. Clearly history, logic and authority sustain the proposition that the Spanish Governor-General of the Philippines had the same authority to make grants as did his colleagues who represented the King in the American colonies, and that there was no practical differences for the purposes of this case between a viceroy and a captain-general; that in fact a captain-general *was* a "viceroy" in the strictest construction of the word. However, we will leave this branch of the subject with a quotation from one other learned Spanish jurist, if the authority of Rodriguez San Pedro is not sufficient to meet the dicta of our adversary. In the foreign laws section of the Congressional Library will be found a Spanish Encyclopædia of Law, published at Madrid in 1853, from volume VII of which, page 658, in an article on captains-general, we take the following:

> "By reason of the circumstances peculiar to our beyond-sea colonies, the office of Captain-General is not comparable in these latter days to the office of captain-general of a single province nor to that of a captain-general in the army here at home in Spain. On account of other attributes, it is a much higher position."

This writer also shows the interchangeability of the terms Captain-General and Viceroy. He says:

> "The office of viceroy has been known since the Conquest. The term expresses that each one was a king in his district.

"Even in the earliest times the colonial "captains-general had more authority than "the title implies at home in the peninsula. "In Cuba and the Philippines the office al- "ready existed in the sixteenth century and "in Porto Rico it was established in 1643. "The loss of a large number of her colonies "obliged Spain to modify the political and "military organization connected with such "matters. Spain lost the dominions and "territories where she had a viceroy. She "kept those where she had only captains- "general, and thus it was that this last "title only remained to her colonial rulers "in the colonies which she still has (1853). "But captains-general were not of such "high rank as viceroys. The latter had "many rights and matters of precedent and "ceremony which captains-general did not "have and to these marks of rank the cap- "tains-general naturally fell heir, and to- "day a captain-general may properly be re- "garded as a viceroy, and in fact they are "called captains-general—viceroys."

* * * * * * *

"They are Royal Vice-Patrons and exer- "cise in their districts universal ecclesiasti- "cal patronage such as belongs to the Kings "in Spain, except in special cases, as for "example the appointment of bishops and "canons; they preside over the colonial au- "diencia," etc.

As is stated in Mr. Justice Johnston's opinion (R., 89), the Royal Cedula of October 15, 1754, "places the question beyond discussion," that is, the question of the authority of the grantor in this original grant to make the grant. It recites the

damage to the King's subjects from having to apply directly to him, and authorizes the viceroys and "presidents of my Royal Audiencias" to grant lands in the colonies. That the Captain-General of the Philippines was president of the Audiencia even our adversary does not deny. Whilst he is on the general question of land grants he fails to squarely face the general land-grant lawof October 15, 1754, upon which we rely. He does not cite that law until after he has passed from his first proposition to his second. We desire, however, to reiterate our reliance upon it as being part of the law governing this case. A translation of it will be found on page 49 of White's Compilation, an examination of which will make clear that it was not the purpose thereafter of the Madrid Government to be bothered in any way with Philippine public lands any more than it now is of the Washington Government and its Interior Department, but to have all such matters disposed of in the country where the land lay and by the duly constituted authorities thereof representing her sovereignty therein. The original text of the law, as is noted on page 89 of the record, appears in San Pedro's Legislacion Ultramarina, volume 4, page 673. Page 688 of this same volume 4 of San Pedro contains a royal decree dated September 21, 1797, addressed to the Governor-General of the Philippines and directing him to follow the law of October 15, 1754. We think this letter to the Governor-General of the Philippines is sufficiently specific,

and the law itself is certainly sufficiently plenary in the powers it confers. Pages 8 to 20 of the Attorney-General's brief are devoted to the first point upon which he relies in support of his contention that our grant was void originally.

In his ineffectual attempt to show that Mr. Justice Johnston of the Supreme Court of the Philippine Islands, in treating as a matter of course what no member of that court questioned, namely, that the authority of a Captain-General was as ample as that of a Viceroy in the making of land grants, our adversary weakens toward the last and, shrinking from a general denial of the authority of Captains-General to make land grants, he closes his argument on this branch of the case by fleeing to the seashore as a judicial resting place, using this language to ease the transition from his first to his second proposition: "but no provision can be found in these laws or elsewhere that empowers the Governors-General of these Islands to make concessions of ownership and exclusive right *in the sea and its shores*" (italics ours).

II.

On page 20 our adversary reaches the second point on which he relies, which is that even if he has failed to make out his case with regard to his first point, as we respectfully submit is obvious above, nevertheless the grant is void because the land was within what he calls "the maritime zone."

Point three, page 23 of the Government's brief,

seems to be nothing more than a restatement of point two, except that point two acts as it were *in personam* and point three *in rem*, in other words, point two insists that no Viceroy, Governor-General or other colonial official had any authority to make such grants, while point three says the land "was of the public domain, and the rights of the public therein cannot be destroyed." This would seem to be another way of stating that this property here in litigation was originally so utterly and absolutely inalienable when ~~he~~ the bought it these fifty odd years ago that we now have no vestige of title whatever to all these various warehouses and other business property the rents of which our agents have been collecting all these years; that the Land Registration Court at Manila erred in recognizing us as having any interest in the property whatever, and that the Supreme Court of the Philippines likewise erred in affirming the same proposition.

Our adversaries insist that for some reason, which their brief fails to make clear to our limited intelligence, grants to individuals intended to encourage the reclamation of land at the water's edge would in some way prejudice the public welfare. On this point the dissenting opinion of Mr. Justice Johnston (R., 85) cites two decisions of the Supreme Court of Spain, one rendered May 1, 1863, and the other April 30, 1863. Judge Johnston simply gives the syllabi or head notes of these decisions, and the Governments's brief, on page 5, coolly reverses Mr. Justice Johnston and the Supreme

Court of Spain by denying that any portion of the surface of the earth which borders upon the sea, is susceptible of reclamation for private ownership. Inasmuch as the full text of both these decisions is available in this country, a set of the decisions of the Supreme Court of Spain being in the Foreign Laws Department of the Congressional Library, we submit here the full text of that court's language in English, to the end that the whole settled policy of Spain in the matter of encouraging the reclamation of public lands along the seashore may be apparent at a glance.

The misapprehension upon the part of the Attorney-General of the fundamental considerations which control the Spanish law will become apparent even upon a casual examination of these decisions.

The citations from Partida upon which the Government relies to defeat our title, if examined in the original or in a good translation (most of what is needed is available in English in White's Compilation) will make perfectly clear that while highways, ports, and harbors, are forever reserved to the public, because the free use thereof concerned the common weal, yet it was not the policy of the law to discourage private enterprise from building good landing places where perchance previously a row-boat might have been dashed to pieces. However, that no such blindness to the public interest as the Government's interpretation of the law controlling this case attributes to

Spain exists, is made clear by the decisions of the Supreme Court of Spain above cited, of which the text of the one first cited is as follows:

(See volume 8, pages 28*et seq.*, of the decisions of the Supreme Court of Spain for the years 1862-3, printed in a series of volumes, the Spanish title of which, being interpreted, is, "Civil Jurisprudence—Complete collection of decisions rendered by the Supreme Tribunal of Justice, etc.")*

> " In the Supreme Court of the Kingdom of
> " Spain, Madrid, May 1st, 1863. Appeal
> " from the District Court of Santander
> " and from Part II of the Circuit Court
> " of Burgos, by Varaguat and Company,
> "concessionare of the Maliano wharf
> " property, versus Don Jeronimo Pujol.
> " Title to land.
>
> " It appears that by a deed executed De-
> " cember 12, 1847, duly registered in the
> " office of the Registrar of Deeds, Dona
> " Juana Ceballos, Countess of Isle Fernan-
> " dez, sold and conveyed to Don Jeronimo
> " Pujol for two thousand reals, free from
> " incumbrance, a mill site, whereon at the
> " time there only remained a ruined mill,
> " situated in the barrio (ward or neighbor-
> " hood) of Cajo, on the outskirts of the
> " City of Santander, near the locality
> " known as Moupia, on the seashore, said
> " property so conveyed being bounded on

* This volume, as well as every other Spanish authority cited in our brief, is readily accessible to both bench and bar by the law librarian of Congress and the Supreme Court, Mr. Borchard, whose efficient and ever cheerfully rendered assistance is invaluable to any one seeking to run down foreign law.

" the south and west by the sea, on the
" northeast by the *hacienda* of the Marquis
" of Balbuena, and on the north by the fac-
" tory and orchard of the vendee, according
" to a plan attached to the deed, wherein
" is made clear the configuration of the
" land, together with all the approaches
" thereto, exits therefrom, appurtenances,
" advantages, easements, and other things
" appertaining and of right belonging unto
" the said tract of land.

" It further appears that by Royal Order
" of August 14, 1851, there was granted pro-
" visionally to certain various inhabitants
" of the town of Santander, the right to con-
" struct a wharf, which, beginning at that
" of Naos, was to terminate at the point
" known as Maliaño, the grantees being
" given, subject to certain conditions, such
" land as they might reclaim from the sea.

" It further appears that on May 15,
" 1852, these grantees transferred their
" rights to Don Pablo Emilio Wisoveg, who
" obtained by Royal Order of January 15,
" 1853, a definitive grant, subject to the
" terms fixed by the original Royal Order
" of August 15, 1851, aforesaid, and subject
" to the conditions set forth in a document
" attached, the seventh paragraph thereof
" providing, 'that from the lands which
" should be reclaimed from the sea by the
" construction of the wharves indicated in
" the plan attached to the grant, the grantee
" was to give free of cost to the State and to
" the city of Santander the necessary space
" for the establishment of a custom house
" and warehouse and the approaches neces-
" sary for roads leading thereto, and for a

" railroad from Alar to Santander, and " whatever might be needed for a city hall, " church, market place, and other public " edifices, and also the grantee was to give " to the inhabitants of said city, the right " to buy such lands as they might select at " a price to be fixed, for constructing build- " ings in the city proper.

" It further appears that having begun " the work on July 23, 1853, Don Pablo " Emilio Wisoveg transferred the conces- " sion on October 10 thereafter to a partner- " ship which was organized at Paris Sep- " tember 9th of said year under the name " and style of Varaguat & Company.

" It further appears that Don Jeronimo " Pujol, being disturbed in the possession " of the land he had bought from the " Countess of Isle Fernandez by the rail- " road company and by Varaguat and Com- " pany, instituted two proceedings at law, " which were decided in his favor by the ju- " dicial authority, whose jurisdiction was " recognized in the course of two adminis- " trative proceedings instituted, one by the " Commandant of Marine and the other by " the Civil Governor of the Province, by " Royal Decrees of December 2, 1853, and " April 6, 1859.

" It further appears that the firm of Var- " aguat and Company presented its petition " on May 23rd of the year last mentioned, " praying:

" First. That the tract of land consisting " of a hectare and a half, more or less, on " the south side of the property of Don " Jeronimo Pujol in the barrio of Cajo, " *formerly covered by the waters of the sea,*

" be declared to have belonged on August " 14, 1851, exclusively to the public domain " and to have been therefore subject to the " disposition that had been made of it, and

" Second. That in view of the context of " the concessions provisionally and finally " expressed in the Royal Orders of August " 14, 1851, and January 15, 1853, and the ex- " pensive works of draining, etc., whereby " the land had been reclaimed from the sea, " the same belonged in full ownership in " the firm and with the use and value thus " added to it, and which it previously lacked, " to the Maliano Wharf Company; and " praying further

"That along with these necessary con- " clusions of law Don Jeronimo Pujol be " enjoined from molesting said Varaguat " and Company and ordered and directed to " leave them in undisturbed possession of " the hector and a half, more or less, of " land aforesaid, without nullification of " any supposed manorial or possessory " rights which he had never in fact acquired, " and concluding with the prayer that he " be adjudged and ordered to pay the costs " of the case.

" It further appears that Don Jeronimo " Pujol made answer, asking that plaintiff's " petition be dismissed, basing his case on " his deed to the land of the year 1847, and " interdictions issue in his favor, and al- " leging that no lands passed to the com- " pany by their grant that were at any time " subject to private right of possession and " ownership, nor could their concession be " construed to his prejudice, either ex- " pressly or by implication, according to the " terms of the decision of the Royal Order

" of April 6, 1859, above referred to; and
" that the land which is the subject-matter
" of plaintiff's petition is subject in all re-
" spect to defendant's right of possession
" and ownership by virtue of his original
" purchase and the immemorial possession
" of his predecessors in title according to the
" laws of Partida and the practice and es-
" tablished jurisprudence of the realm.

" It further appears that the case being
" fully heard on its merits, after proof had,
" the District Court rendered its judgment
" in favor of Don Jeronimo Pujol on March
" 15, 1861, which judgment was affirmed by
" the Circuit Court on June 10, thereafter.

" The Company appealed to this court,
" assigning as ground of error that the de-
" cision was in conflict with laws 3, 4, 6 and
" 32, title 28, partida 3, and the Royal
" Orders granting the concession of August
" 14, 1851, and January 15, 1853. The
" plaintiffs also urged in this court that the
" decision below contravened.

" (1) Law 2, title 14, and law 8, title
" 3, of Partida 3 as applied by this tribunal
" in its decisions of October 9, 1860, and also
" the doctrine laid down in Article 274 of
" the Law of Civil Procedure.

" (2) The rule of law set forth in Partida
" 3, title 34, law 12, to the effect that no
" one can give away what he does not pos-
" sess.

"3rd. Part 3, law 2, title 7, in so far as
" the decision holds that title to land on the
" seashore may be acquired by prescrip-
" tion; and part 3, title 28, law 31.

"4th. Part 3, title 28, law 32, and part 3,
" title 30, law 14, according to which, and in

" the nature of things, the right of pos-
" session having been really already ac-
" quired, is lost by re-submergence.

" (5) The axiom of public law that 'the
" application of waters and other public
" things to private use does not carry with
" it the title to the soil, which is also public,
" rights in respect of such waters ceasing
" with the reason on which the grants of
" such rights are based,' a principle contra-
" vened by the present decision, which also
" violates part 3, title 28, law 8, and the
" Royal Orders of August 21, 1849, and
" May 21, 1853, confirmed by the Royal De-
" cree of April 29, 1860.

" The minister, Don Ventura de Colsa y
" Pando, delivering the opinion, held:

"While it is true that Partida 3, title 28,
" laws 3 and 4, in determining what things
" are the common right of men and how
" they may use them, enumerates as such,
" among other things, the sea and its shores,
" this is not to be taken in an absolutely
" literal manner, since a number of limita-
" tions to the general proposition have been
" recognized for the common benefit of the
" community as being conducive to the gen-
" eral welfare of the State, which latter may
" grant shore land for improvement where
" the same has not already lawfully come
" under private ownership.

" The concession granted to the Maliano
" Wharf Company of the lands it might re-
" claim from the sea does not apply to lands
" which had theretofore already been re-
" duced to private ownership.

" Don Jeronimo Pujol acquired the land
" which is the subject of this litigation by

" the deed of December 12, 1847, and from
" that time on he has been in the use and
" possession of the land in the same manner
" as his predecessors in title down from
" time immemorial, and therefore his right
" in said land must be respected and can-
" not be included in the concession under
" which plaintiffs claim.

"Therefore the decision of the court be-
" low does not controvene the laws cited, to
" wit: Partida 3, title 28, laws 3 and 4, nor
" the Royal Orders of August 15, 1851, and
" January 15, 1853.

"Partida 3, title 28, laws 6 and 32, the
" first relating to the use that may be made
" of ports, rivers, and public highways, and
" the second providing that ownership of
" land is not lost even though it be covered
" by water* has no application to a proceed-
" ing which concerns land on the sea-shore."

The other decision of the Supreme Court of Spain, namely that of April 30, 1863, appears in the same volume as the preceding case, to wit, volume 8, Reports of the Supreme Court of Spain (above described), on page 291 thereof, immediately following the case above set forth. It is as follows:

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* River freshets.

" In the City of Madrid, Supreme Court of " Spain, April 30, 1863. Appeal from " the District Court of Arenys de Mar, " and from the Circuit Court at Barce- " lona in the case of Don Buenaventura " Sans against the Barcelona Railway " Company concerning the reclamation " of land.

" It appears that on January 24, 1777, " the intendant general of the principality " of Cataluna issued a grant in emphyteusis, " in the name of his Majesty, in favor of " Mrs. Maria Francisca Sans, to a tract of " uncultivated and useless land adjacent to " a flour mill owned by her in the town of " Arenys de Mar, which tract of land was " less than forty yards square in area, and " was bounded on the east and south by the " sea beach, on the west by the stones bor- " dering the lower side of the Royal High- " way, and on the north by said highway, " for the purpose of constructing a reser- " voir whose walls should form a sea-wall, " it being provided in the grant that the " grantee and her successors might use " and enjoy said land, paying upon enter- " ing into possession the sum of seventy " reals, and four sou per annum thereafter " as quit rent (de censo), the grantee being " inhibited from recognizing in connection " with the property granted any person " whatsoever save his Majesty the King, " even in the event she should sell or ex- " change the property, the direct dominion " and over-lordship thereof being reserved " to the Royal Treasury, with all the rights " and appurtenances appertaining to such " dominion.

"It further appears that an agreement "was entered into on the 7th of October, "1856, by the city council of Arenys de "Mar, the maritime authorities and a cer- "tain number of tax payers, with the East- "ern Railway Company of Barcelona, in "which said agreement, among other "things, it was stipulated that the railway "station should be constructed on the lower "side of the public road in front of the mill "of Don Buenaventura Sans. The latter "filed a proceeding on the 31st of July, "1858, against the Railway Company afore- "said, alleging that the land conveyed by "the deed above referred to and of which "he, the petitioner, had been in peaceful "possession as the descendant and succes- "sor in title to Mrs. Maria Francisca Sans, "had been occupied in its whole extent by "the building of the railway company. "Petitioner prayed that the company be "condemned to pay him the value thereof "and reimburse him for the damage and in- "jury which its occupation had caused him, "together with the legal interest from the "day of its occupation to the day of such "payment and the costs.

"The defendant company answered, al- "leging that the land where its station had "been located was not only a part of the sea- "shore at the date of the emphiteutic grant "on which petitioner relied, but also that at "the time of the construction of the said "railway station the property alleged to "have been conveyed to the petitioner was "not susceptible of private ownership, nor "could it be granted as part of the crown "lands (royal patrimony) because the title "to the beach was not in the crown but in

" the State; and besides that in the instru-
" ment in question only some forty square
" yards for the construction of a reservoir
" were embraced, and that the building of
" the railway station not only had left that
" property untouched, but had notably in-
" creased its value.

"Briefs having been duly submitted and
" the trial court having made an inspection
" of the premises, accompanied by two
" architects, a plan showing the disputed
" tract made by the said architects was at-
" tached to the proceedings in the case, on
" which said plan it was stated that the tech-
" nical signification of the phrase in the
" deed providing that the land should con-
" sist of forty yards square meant a square
" having an area of 1,600 square yards.

"It further appears that the district court
" rendered judgment, which was affirmed
" by the circuit court at Barcelona on April
" 26, 1861, declaring to be the property of
" Don Buenaventura Sans the tract of land
" granted to his predecessor in title Mrs.
" Francisca; that said tract of land had been
" occupied by the station of the Eastern
" Railway and its appurtenances to the ex-
" tent of 1,313.25 yards, and that therefore
" the plaintiff was entitled to be indemnified
" by the company to the extent of its value,
" and three per cent interest from the date
" of the occupation of said land to date of
" payment of the judgment; the parties
" being required to come into court and com-
" ply with the terms of the decree according
" to the law governing condemnation pro-
" ceedings.

"It further appeared that the railway
" company appealed, alleging infringement

" of the doctrine laid down by the Council
" of State in the Royal Order of December
" 24, 1859; infringement of the provisions of
" book 2, title 1 (De rerum divisione), Insti-
" tutes of Justinian; law 2, title 8, book 1,
" Digest (of Justinian); partida 3, title 28,
" law 3, and title 29, law 7; article 20, rule 1,
" of the law of June 3, 1855; the legal prin-
" ciple that no one can give what he does not
" possess; and finally, of law 1, title 1, book
" 10, of the Novisima Recopilacion.

"The Minister Don Joaquin de Palma y
" Vinuesa delivering the opinion, the court
" held:

"The general principle that the sea and
" its shores belong in common to all crea-
" tures and may be used by all is limited in
" certain cases by the same laws and provis-
" ions which laid down that principle. Said
" principle can be and is so limited by the
" executive departments which, modifying
" it in principle, subject it to special and
" fixed rules whereunder they give and
" create rights of possession and exclusive
" use in property granted by proper author-
" ity in such manner as not to prejudice
" common use by the general public. Ac-
"cording to this doctrine which has been
" recognized by the appellant company,
" which bases its allegations and claim of
" right upon the provisions of rule first,
" article 20 of the law of June 3, 1855, it was
" competent to make the emphiteutic grant
" which is the subject of this litigation to
" Mrs. Maria Francisca Sans, from whom
" the original plaintiff below in these pro-
" ceedings derives title by virtue of the in-
" strument of January 24, 1777.

"Under these circumstances, and there

" being no assignment of error as to the ex-
" tension and measurement of the land re-
" ferred to, the question is narrowed to
" whether or not the royal patrimony could
" make the grant in question or whether the
" right to do so was vested exclusively in the
" state.

"It cannot be denied that the concession
" was made and possession given, and that
" the royal patrimony in Catalúna did grant
" this class of titles, and that at the time this
" grant was made it was administering the
" affairs of the King and the interests of the
" State, through its duly accredited repre-
" sentative.

"Wherefore, the foregoing considered,
" the decision of the district court sustain-
" ing the action and upholding the right of
" the plaintiff to be indemnified has not vio-
" lated any of the laws or doctrines invoked
" in the appeal to this court. Nor, more-
" over, has there been any infringement of
" law one, title one, book ten, of the Novis-
" ima Recopilacion, the same being noto-
" riously inapplicable to this case, because
" there is no question here of any contract
" out of which obligations have arisen be-
" tween the parties litigant. We therefore
" hold that the appeal interposed by the
" Barcelone Railway Company is not well
" taken, and we condemn it to payment of
" costs and forfeiture of the money depos-
" ited, which will be distributed in accord-
" ance with law. Let these proceedings be
" returned to the circuit court, from whence
" they came, with the proper certificate."

Certainly the foregoing decisions need no comment from us to demonstrate that Mr. Justice

Johnston was right in citing them (R., 85) as controlling the case at bar on this point. Just how far, if at all, the Law of Waters of 1866, cited by the Government on page 31 of its brief, modifies the law announced and expounded in these decisions, it would be superfluous and immaterial to inquire, the provisions of that law being entirely irrelevant to what the law was at the date of our grant in 1859 as declared in these decisions handed down by the Supreme Court at Madrid in 1863. In view of the plenary powers possessed by the Captain-General of the Philippines, there is no escape from the logic of the proposition that to defeat this grant the Government should be able to show a positive prohibition of such grants. And on page 33 of his brief we find our adversary virtually admitting he cannot do so and vainly complaining against any process of reasoning which should force him from his position "because of lack of a positive law upon the subject."

III.

Having now disposed of the main burden of the Attorney-General's brief, we come, on page 34 thereof, to some of his ballast, viz., point 4, wherein he relies upon the Constitution of Spain of 1845 to support the proposition that "on February 12, 1859, the date of the alleged concession, the King of Spain himself was without authority to make such a concession." The answer to this proposition is found in the concluding article of the same

instrument, to wit, article 80 of the very Constitution which he quotes, which says:

> "ART. 80. *The provinces of Ultramar will be governed by special laws.*"

Obviously the old law remained until repealed, else chaos supervened. A copy of this Constitution of 1845 may be found in the Foreign Laws Section of the Library of Congress in volume 3 of the fifth edition of Alcubilla's Dictionary of Spanish Administration.

With regard to the Treaty of Paris we insist that the rights of our client are precisely what they were on August 13, 1898, the day the city of Manila was surrendered to the American forces, and the American flag was run up in the public square in front of the Government house in the ancient walled city. What his rights then were they are today, therefore it may not be superfluous to clear up those rights by reference to the language of several now historic documents. In the preliminary number of the Official Gazette, published by the authority of the Philippine Insular Government, on page 1, volume 1 thereof, we find the instructions of President McKinley to General Merritt, dated May 19, 1898, General Merritt being then on the eve of his departure for San Francisco to take command of the first expedition to the Philippines. These instructions are headed "War Department, May 28, 1898," being contained in a letter of that date from the Secretary of War addressed to Major General Wesley Merritt, U. S. A.,

commanding the Army of Occupation in the Philippines, transmitting to the General the President's instructions to the Secretary of War, for the guidance of the military commander. This now famous document, which is one of the ablest state papers in our history, says, among other things:

> " Though the powers of the military occupant are absolute and supreme and immediately operate upon the political condition of the inhabitants, the municipal laws of the conquered territory such as affect private rights of person and property, and provide for the punishment of crime are considered as continuing in force so far as they are compatible with the new order of things, until they are suspended or superseded by the occupying belligerent, and in practice they are not usually abrogated, but are allowed to remain in force and to be administered by the ordinary tribunals substantially as they were before the occupation. This enlightened practice is to be adhered to as far as possible on the present occasion."
>
> * * * * * * *
>
> " Private property, whether belonging to individuals or corporations, is to be respected." * * *

The closing paragraph of the Articles of Capitulation of the City of Manila, dated August 14, 1898, is as follows:

> " This city, its inhabitants, its churches and religious worship, its educational es-

> " tablishments, and its private property of
> " all descriptions, are placed under the
> " special safeguard of the faith and honor
> " of the American Army."

The Treaty of Paris need not be elaborated on in this supplemental brief. In the long list of eminent lawyers who have practiced before the bar of this court since its foundation, none is so specially remembered as an authority upon Spanish colonial land laws as Mr. Joseph M. White, the author of the well-known Compilation of 1828. In the introduction to his book on the Laws of the Indies, published ten years after the Compilation aforesaid, Mr. White, in speaking of the fame of Chief Justice Marshall as identified with all that is great and good in the Republic, and interwoven with its firmest and most lasting foundations, says of the law of Spanish land grants:

> " There is no branch of our national juris-
> " prudence that has received more light
> " from that splendid intellect which with
> " giant steps mounted to the heights of for-
> " eight law and provincial authority and ex-
> " pounded in a masterly manner the just
> " interpretation of treaties."

In representing before this court the property rights of a grandee of Spain, which are now, by the terms of the Treaty of Paris, under the special safeguard of the faith and honor of the American people, we of this generation look as confidently to

this court as did the men of Mr. White's day for "the just interpretation of treaties."

Among the decisions of this court involving Spanish titles none are more exhaustive and more luminous than that of Chief Justice Marshall in *United States vs. Clark,* 8 Pet., 436. Speaking of the treaty of February 23, 1819, whereby Spain ceded the Floridas to the United States and the language employed therein with respect to the protection and recognition of land titles therein made by Spain that opinion pertinently observes (p. 449):

> "It is not unreasonable to suppose that
> " his Catholic Majesty might be unwilling
> " to expose the acts of his public and confi-
> " dential officers and the titles of his sub-
> " jects acquired under those acts, to that
> " strict and jealous scrutiny which a for-
> " eign government, interested against their
> " validity, would apply to them, if his
> " private instructions or particular au-
> " thority were to be required in every case,
> " and that he might, therefore, stipulate for
> " that full evidence to the instrument itself
> " which is usually allowed to instruments
> " issued by the proper officer."

Again (p. 451):

> "Such a grant, under a general power,
> " would be considered as valid, even if the
> " power to disavow it existed, until actually
> " disavowed. It can scarcely be doubted,
> " so far as we may reason on general prin-
> "ciples, that in a Spanish tribunal a grant

"having all the forms and sanctions re-
"quired by law, not actually annulled by
"superior authority, would be received as
"evidence of title."

Again (p. 458):

"We collect from the extracts from the
"Laws of the Indies which are given us in
"Clark's Land Laws and White's Compi-
"lation, that they apply chiefly to the gen-
"eral purposes of population and settle-
"ment. For the attainment of these ob-
"jects, general rules were framed, which
"contain affirmative instructions to the
"officers to be observed in the formation of
"new settlements, in donations to emi-
"grants, and in the sale and distribution of
"crown lands. How far a discretion in the
"execution of these laws, or whether any
"discretion was placed in those distant offi-
"cers to whom they were directed, we have
"not the means of ascertaining. So far as
"we are informed, they contain no negative
"or prohibitive words, and the regular re-
"ports of governors must have kept their
"superiors informed of their proceedings.
"Mr. White says, p. 9: 'I sought assidu-
"'ously, but have been unable to discover a
"'record or notice of the proceedings upon
"'some grant or concession which had been
"'made by a captain-general, intendant or
"'governor, and disapproved by the king.
"'I have been unable to ascertain whether
"'any such exists.'"

The opinion proceeds (p. 462):

"The favor of granting rewards is ex-
"pressed in terms indicating the expecta-

"tion that is to be exercised by those gov-
"ernors who are also viceroys; but there
"are no prohibitory words, and the general
"power of granting lands, extended to the
"governors of distant provinces, or where
"sea intervenes, may comprehend granting
"as a reward for individual merit. The
"facts that this power was exercised cer-
"tainly as early as 1813 by the governor of
"east Florida, that the condition of the
"province and the exhausted state of the
"kingdom seemed to require and justify it,
"and that the king never disapproved the
"proceedings of the governor, existed when
"the treaty was formed. *Such was the*
"*state of things to which the treaty ap-*
"*plied.*" (Italics ours.)

What was the state of things in respect of the grant here involved when the treaty of Paris was made?

For *forty years* this grant to Camps was of public record. The land it embraced was but a short distance from the governor's palace at Manila and lay between it and the Government light-house marking the entrance to the Pasig River. Hence the land lay in plain daily view of Spain's highest representative in the Philippines. The grantee and his successors gradually reclaimed the land; warehouses were built thereon; the government imposed taxes thereon; the grantees enjoyed undisturbed possession.

Nothing appears on this record to suggest that during all that long period the Spanish authorities

challenged this grant and ownership in any manner. Is it not reasonable hence to say that when Spain transferred her sovereignty the stipulations of the Treaty of Paris *in her understanding* protected this title made by her representative as fully as the title of all her subjects to their holdings *in fee?* Is not this but the "just interpretation" of that treaty?

Furthermore does it comport with justice to find that after American occupation of over five years had elapsed with this prominent site left in unchallenged possession and ownership of this petitioner the Philippine government intervenes to deny a title which for over half a century had then stood unchallenged by the petitioners' government and by our own?

Tested by the plain language and purpose of the treaty we submit the answer is obvious.

Respectfully submitted.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 112.

JOAQUIN JOVER Y COSTAS, APPELLANT AND PLAINTIFF IN ERROR,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE CITY OF MANILA.

No. 113.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE CITY OF MANILA, APPELLANTS AND PLAINTIFFS IN ERROR,

vs.

JOAQUIN JOVER Y COSTAS.

APPEALS FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR JOAQUIN JOVER Y COSTAS, APPELLANT AND PLAINTIFF IN ERROR.

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Statement.

This case comes before this court both on appeal and writ of error to review a decision of the Supreme Court of the Philippine Islands affirming a judgment of the Court of

Land Registration at Manila. The last-named court was created by Act 496 of the United States Philippine Commission. The act creating the court is copied almost *verbatim et literatim* from the Massachusetts Land Registration Act, and is therefore like the rest of the courts of similar designation which have grown up as part of the Torrens system.

Appellant filed his petition in the Court of Land Registration praying for the registry of certain land situate at the mouth of the Pasig River just outside the City of Manila, alleging in his petition that he is the absolute owner of said property, and attaching thereto the various documents constituting his chain of title, beginning with a grant dated February 12, 1859, from the Spanish Governor-General to one Jose Camps (R., 1-2).

The Philippine Insular Government, through its Attorney-General (R., 34), and the City of Manila, through its counsel (R., 33), appeared before the Court of Land Registration and objected to the registration of said property as the property of this appellant, and for cause of objection said that the original grant made in 1859 by the Spanish Governor-General to the said Jose Camps was null and void because the Governor-General had no authority to make it, such authority to grant land being vested exclusively in the Spanish Crown, and that therefore the land in question still constituted a part of the public domain, having never been lawfully separated therefrom.

They further urged that even if the Spanish Governor-General or Viceroy did have authority to make grants of land, nevertheless this particular instrument was a grant made on condition that the grantee should fill in and reclaim the land (the land at that time was all under water—"at present covered by the sea," says the grant, R., 30, line 6 from bottom of page), and they insist that this was a condition precedent, that it has never been complied with, and that, therefore, no title ever vested in the grantee.

The Court of Land Registration rendered its decision on

April 18, 1905 (R., 67), allowing the registration of the filled-in part of the land only, and refusing to grant registration of the remainder.

Both sides appealed to the Supreme Court of the Philippine Islands, a majority of which tribunal affirmed the decision of the Court of Land Registration. The reviewing court was considerably divided. Six justices sat in the case. Four agreed with the Court of Land Registration. One (Mr. Justice Johnson) thought our client was entitled to the whole tract conveyed by the original grant, and gave reasons for that belief in a vigorous and elaborate dissenting opinion (R., 73-99), upholding the petitioner's contention; while the sixth member of the court, Mr. Justice Tracey (R., 99), in a very brief dissenting opinion, which does not attempt to go into any extended statement of the reasons on which it is based, sustains the contention of the Philippine Government and the City of Manila that the petitioner is not entitled to anything.

The majority opinion (R., 73), signed by four of the justices, as above stated, like the dissenting opinion of Justice Tracey, fails to give any of the reasons on which it is based. In fact, it is but four lines long, and states that they are unable to agree upon the grounds upon which their conclusion is based. So they do not attempt to set forth their various and several reasons, but simply affirm the judgment of the trial court.

From the judgment of the Philippine Supreme Court an appeal was taken to this court (R., 101) and also a writ of error was sued out (R., 101-2).

The petitioner contends that he is the absolute owner of all the land in question. He bases this contention upon the following facts:

First. The grant of February 12, 1859. The certificate of the grant reads (R., 30-32):

> "Don Jose Luis de Baura y Soriano, a lawyer of
> "the Royal Court of Chancery, Knight of the Mili-

"tary Order of San Juan of Jerusalem; member of "the Royal Economical Society of Friends of the "Country; member of the General Commission of "Statistics, and Secretary of the Superior Civil Gov- "ernment of the Islands, etc.:

"I certify that on *the petition filed by Don Jose* "*Camps, official primero Jubilado* of this office, *in* "*which petition he asks for the concession of a piece* "*of land* TWO HUNDRED BRAZAS* *long and* ONE HUN- "DRED BRAZAS *wide* in the lowland back of the north- "ern wharf (Murallon del Norte) of the Pasig River, "the Superior Decree, hereinafter set forth, was is- "sued on February 12, 1859:

"Acting upon your petition in which Don Jose "Camps on November 17, 1858, solicited a grant "for the land which he fills in at his expense on "the lowlands situated along the northern wharf "(Murallon del Norte) and on the north side thereof "on the right side of the mouth of the Pasig River, "with an extension of 200 brazas in length and 100 "brazas in width, beginning at a distance of 25 varas "(Spanish yards) west of the bridge built on said "wharf for the connection of the waters of the "river and of the bay from the beach of Bi- "ondo, as appears on the plan hereto attached, "to which land after it has been filled in, he "intends to move his artistic establishment called "'Camps e hijos,' and a manufactory of hemp "rope; in view of the report made on the 26th "of the said month of November, by the Alcalde "Mayor Primero of Manila, who, after consultation "with the Director of Public Works of the Province, "is of the opinion that the waste land asked for "should be granted to Camps, said land being at "present covered by the sea, and being far from the "houses situated on the Binondo beach, it is very "suitable for purposes of maritime commerce and it "is convenient for the purpose of public adornment, "that the foundry, ironworking and scientific in- "strument establishment of 'Camps e Hijos' be lo- "cated on the place, provided that the said Camps

* A braza is a fathom—6 feet or 2 yards.

" shall agree not to erect such buildings with brick " and stone or strong materials, for the reason that " the same is outside of the military lines; in view of " the report made on December 17, 1858, by the " Commanding General of Marine, in agreement " with the captain of the port regarding the conve- " nience of such concession for the merchant marine " and public adornment, but with the precise con- " dition that Camps shall leave a distance of 16½ " varas between the outside edge of the wharf and the " intended building, which width is the one fixed " for wharves; in view also of the report of the Sub- " inspector of Engineers with the approval of the " Commander of the post, proposing that the conces- " sion asked for shall not be granted for a building " of strong materials, on account of the forts of the " place, and that the building to be erected shall con- " sist only of one story, and shall be removed at the " expense of its owner, at the direction of the Superior " Authority of the Islands when the public interest " so require it; taking into consideration the circum- " stances and the official and industrial merits of the " said Don Jose Camps, and the offer of protection " stated in the Decree dated November 4, 1858, when " refusing the sale, asked for by him, of an irregular " piece of land adjoining the New Cuartel del Care- " nero, and in conformity with the above mentioned " reports of the Commanding General of Marine, " the Subinspector of Engineers, and the Civil Chief " of the Province of Manila, I hereby decree:

"Don José Camps, Comisario de Guerra Honorario, " Official Mayor Jubilado, of the office of the Secre- " tary of his superior government and Director of the " iron working and nautical instrument establishment " of 'Camps é Hijos,' is granted *the possession and* " *ownership* of a parcel of land 200 brazas in length " and 100 brazas in width covered at present by the " waters of the sea, near the Binondo beach, which " land is situated along side the Murallon del Norte, " and *the requested authority to fill in the same* at his " expense is also hereby granted, subject to the fol- " lowing conditions and restrictions:

"1st. The land to be filled in shall form a quad-

"rangle 200 brazas long and 100 brazas wide; begin-
"ning on the longer side, nearest to the Pasig River,
"at a point 25 varas from the bridge connecting the
"waters of the river and of the bay and running
"parallel with the wharf toward the lighthouse.

"2nd. The buildings to be erected by Camps on
"this new land so granted shall be located along the
"said longer side parallel to the breakwater, sepa-
"rated from the edge of the exterior wharf, for its
"whole length, a distance of 16½ varas, which is the
"width required for wharves.

"3rd. The said buildings shall consist of only one
"story, no materials of the kind prohibited in the
"military zone shall be employed therein, and shall be
"roofed with zinc, tarred paper, nipa, or other similar
"materials.

"4th. The said buildings shall be removed at the
"expense of Don José Camps or his successors when-
"ever, at the discretion of the supreme authority of
"the Islands, the military service so requires it. Let
"the interested party be notified, and a certified copy
"be issued to him. Norzagaray.

"At the request of the interested party I issue these
"presents at Manila, on the first day of July, eigh-
"teen hundred and sixty-two.

"(Signed) J. Baura Soriano."

There is *a seal* with the following words: *Office of the Secretary-General of the Supreme Government of the Philippines.* (Italics are ours.)

Second. That on the 17th day of August, 1877, the said land, having became the property of the heirs of the said José Camps, was sold by them in good faith to, and was bought from them in good faith by, Juan Jover y Serra, father of petitioner, for 32,000 pesos, or about $16,000 American money.

Third. That some time on or about August 27, 1888, the estate of the said Juan Jover was duly settled and the prop-

erty in question, in the division of the estate, became the property of this son, Joaquin Jover, the present appellant and plaintiff in error.

Fourth. That the original grantee, José Camps, and his successive grantees have been in the actual, peaceable, quiet, and uninterrupted possession of said lands since the said 12th day of February, 1859.

Fifth. That the title to said land had been duly registered in the registry of property of the province of Manila, as provided by the then existing Spanish law.

Sixth. That before finally purchasing this property in 1877, as above stated, Juan Jover made due inquiry of the Manila authorities then and there representing the Spanish Government concerning the validity of the original grant of 1859 to said José Camps, and he was informed by each of them that the said grant was made by authority and was valid. (See testimony of Eduardo Vidal, R., pp. 35-40.)

Seventh. That, relying in good faith upon the title thus obtained, appellant and his father have made improvements upon the land, so that now, according to the assessing authorities of the city of Manila, the land with its improvements is valued at $255,578 United States money.

Assignment of Errors (R., 106-107).

I.

The court erred in finding that the concession was not an absolute concession of an extension of two hundred brazas in length by one hundred in width in the place therein described.

II.

The court erred in finding that, even upon the hypothesis that the concession was a conditional one, the condition was not complied with.

III.

The court erred in finding that the concession was only of the extension "which might be filled in or come to be filled in within those (the) limits" of the concession.

IV.

The court erred in holding that a Spanish concession of lands could be defeated after the Treaty of Paris, because of the existence of a condition in said concession and that the inscription in the registry of property could be canceled.

V.

The decision of the court is in conflict with the following provisions of the Treaty of Paris:

> "In conformity with the provisions of articles I, II, " and III of this treaty, Spain relinquishes in Cuba, " and cedes in Porto Rico and other islands in the "West Indies, in the Island of Guam, and in the " Philippine Archipelago, all the buildings, wharves, " barracks, forts, structures, public highways and " other immovable property which, in conformity " with law *belong to the public domain, and as such* " *belong to the Crown of Spain.*"
>
> "And it is hereby declared that the relinquishment " or cession, as the case may be, to which the preced- " ing paragraph refers, *cannot in any respect impair* " *the property or rights* which by law *belong to the* " *peaceful possession of property of all kinds,* of prov-

"inces, municipalities, public or private establish-
"ments, ecclesiastical or civic bodies, or any other as-
"sociations having legal capacity to acquire and pos-
"sess property in the aforesaid territories renounced
"or ceded, *or of private individuals, of whatsoever*
"*nationality such individuals may be.*"

"Spanish subjects, natives of the peninsula, resid-
"ing in the territory over which Spain by the present
"treaty relinquishes or cedes her sovereignty, may
"remain in such territory or may remove therefrom,
"*retaining* in either event *all their rights of prop-*
"*erty,* including the right to sell or dispose of such
"property or of its proceeds; * * *"

VI.

The decision of the court deprives the applicant and appellant of his property without due process of law.

VII.

In view of the evidence presented at the trial, the court erred in not rendering judgment in favor of the applicant and appellant.

Because of the circumstances that this is really two cases in one, both coming here by appeal and writ of error, we will not attempt to deal with our own assignments of error or those of our adversaries *seriatim,* but will take up the questions in dispute in the order in which they seem naturally to fall, which natural order, or at least a very convenient order, would appear to be.

FIRST.

Did the Spanish governor of the Philippines have authority to make the original grant of February 12, 1859, to José Camps?

SECOND.

Did the trial court err in holding the original grant was not an absolute conveyance?

THIRD.

If the original grant was not an absolute conveyance, and if filling in the land was a condition precedent but no time limit for the filling in was fixed, would the grant be subject to annulment summarily at the will of the Spanish government, or would they have to grant a reasonable time?

FOURTH.

If the original grant was a conditional one, the Spanish government not having availed itself of its right to contest the same, can the present government do so, and if yes, can the attorney general, or the city attorney of Manila, without special authority from Congress, contest it on behalf of this nation?

FIFTH.

If the ownership of the land was granted on condition that it be filled in, has the condition been complied with in such a manner as to have rendered the grant incontestable, according to the evidence adduced at the trial?

ARGUMENT.

WAS THE SPANISH GOVERNOR OF THE PHILIPPINES AUTHORIZED BY LAW TO MAKE TO JOSÉ CAMPS THE ORIGINAL GRANT OF FEBRUARY 13, 1859?

Mr. Justice Johnson, in his dissenting opinion supporting our contention (R., 73-99), disposes of this feature of the case by simply quoting with approval a long extract from the brief of our Manila associate counsel, Hon. W. A. Kincaid, presented before the Supreme Court of the Philippines (R., 81 *et seq.*).

The extract there set forth deals both with the authority of the King of Spain to make a grant of this kind (*i. e.*, of land partially, or periodically, or wholly under salt water, along the shore of a harbor of his dominions); let us say a land-locked harbor belonging exclusively to Spain. We may properly assume this, because the court may take judicial cognizance that Manila harbor is a land-locked harbor which belonged exclusively to Spain in 1859, the year of this grant, as completely as it belongs to us now.

With all due respect to our adversaries in the court below, we will not waste time and space seeking to prove that the King could have made this grant. The Court of Land Registration did not question it (R., 67 *et seq.*), nor did any of the six members of the Supreme Court, neither the four justices who affirmed the trial court (R., 73), nor the one (Justice Johnson) who said we ought to have all the land (R., 73 *et seq.*), nor the one (Justice Tracey) who said we were not entitled to any of it. "L'etat c'est moi," said Louis XIV.

With all due respect to each and every member of the court below, it would really seem like putting up a straw

man for the purpose of knocking him down, to waste any time on the question of whether the Governor of the Philippines had authority to make this grant in the name of the King, were it not for the fact that Mr. Justice Tracey, in his dissenting opinion (R., 99), says "the power to grant land under tidal waters was one *expressly reserved* to the King of Spain." (Italics ours, not his.) Yet he cites us to no express reservation, while we, in our brief before the court of which he is a member, cite him (R., 82) to one of the laws of the Indies which empowers viceroys to "grant such rewards, favors, and compensations as to them may seem fit."* (It appears that our original grantee, Camps, was a man who is recited in one of the whereases of the deed to have rendered distinguished public service.) We further specifically cite in the same connection another of the laws of the Indies which confers upon the viceroys the same power in the provinces they rule over as the King himself "in all cases where no special prohibition exists."

On pages 83 *et seq.* of the record, in Mr. Kincaid's brief, which Justice Johnson adopts as his opinion, the subject is pursued in such an able, exhaustive, and scholarly manner that it would seem mere pedantry in us to attempt, by further Spanish citations, to demonstrate more clearly that "His Most Catholic Majesty," the King of Spain, "the Vice-Regent of God on Earth," and his viceroys acting in his name, had full power and authority to make a grant such as the one which here constitutes the cornerstone of the plaintiff's title. But in our own jurisprudence there is much in point. In one of the leading cases on Spanish Colonial land grants—we refer to the famous Arredondo case (6 Peters, 691 *et seq.*), which came up from Florida—the court said (p. 722):

*See the translation of this same passage in White's Compilation of 1828, p. 30.

> " Congress has been content that the rights of the
> " United States should be surrendered and confirmed
> " by patent to the claimant, under a grant purporting
> " to have emanated under all the official forms and
> " sanctions of the local government. This is deemed
> " evidence of their having been issued by lawful,
> " proper, and legitimate authority—when unim-
> " peached by proof to the contrary."

And on page 727 of this same case this language occurs:

> " If it was not a legal presumption that public and
> " responsible officers claiming and exercising the
> " right of disposing of the public domain, did it by
> " the order and consent of the government, in whose
> " name the acts were done, the confusion and un-
> " certainty of titles and possessions would be infinite,
> " even in this country, especially in the States whose
> " tenures to land depend on every description of in-
> " ceptive, vague, and inchoate equities, rising in the
> " grade of evidence, by various intermediate acts, to a
> " full and legal confirmation, by patent, under the
> " great seal."

But later this court went further along this line of sustaining Spanish land-grants where issued by duly commissioned local authorities than it did in the Arredondo case, for in *Strother vs. Lucas*, 12 Peters, 410, 438, it is laid down that:

> " Where the act (of an officer to pass the title to
> " land according to the Spanish law) done is contrary
> " to the written order of the king, produced at the
> " trial, without any explanation, it shall be presumed
> " that the power has not been exceeded; that the act
> " was done on the motives set out therein, and ac-
> " cording to some order known to the king and his
> " officers, though not to his subjects; and courts
> " ought to require very full proof that he had tran-
> " scended his powers before they so determine it."

Surely there can be no need of discussing further the power of the Spanish Governor to make the grant.

DID THE PHILIPPINE COURTS ERR IN HOLDING THAT THE ORIGINAL GRANT WAS NOT AN *ABSOLUTE* CONVEYANCE OF *ALL* THE PROPERTY THEREIN DESCRIBED?

Says Mr. Justice Johnson in his dissenting opinion (R., 81; 10 Phil. R., 534):

> "The grant of February 12, 1859, was absolute to "a definite tract of land and no conditions precedent "or subsequent were imposed. The grantee was re- "quired to do nothing in order to make said grant "to said tract of land complete. He has expended "large sums of money upon the same, etc., * * *."

From the language of the original grant (supra) it is clearly seen:

First. That Don Jose Camps applied to the Governor of the Islands for a grant of land with permission to fill it in at his own expense, in the lowland lying along the water front on the north or right bank of the Pasig River, at its mouth, the area applied for to be 200 brazas in length by 100 brazas* in width.

Second. That after the reports of the competent authorities had been submitted to him the Governor granted the applicant two rights, to wit: (*a*) *Possession and ownership* of a parcel of land 200 brazas long and 100 brazas wide on the lowlands at that time covered by the waters of the sea * * * and (*b*) *the requested (and necessary) permission to fill in that lowland and to build thereon,* a permission given after the grantee had been declared possessor and owner of the land.

The numbered clauses which appear in the grant do not and cannot affect in anywise the ownership of the land granted, because number one of said clauses refers ex-

* A braza is a fathom, 6 feet or 2 yards.

clusively to the space of land granted and which can be filled in, just as if it said: "The only land that I grant you and that you can fill in is a parcel of 200 x 100 brazas, and whatever may be over that measure is not within the limits of the grant."

This interpretation is the nearest to the right one inasmuch as preceding the clause numbered one appear the words *"Subject to the following conditions and limitations."* And the conditions inferred from the first clause refer: (*a*) to the shape of the land which is precisely a quadrangle 200 brazas long by 100 brazas wide; (*b*) to the designation of the location in which should be placed the largest side of the geometrical figure; (*c*) to the point of reference for the survey, and (*d*) to the distance that should intervene between the former point and the starting point of the survey, a distance which shall not be more nor less than 25 varas from the bridge communicating the waters of the river with the waters of the bay.

The mere perusal of the other clauses shows that they refer only and exclusively to the buildings that may be erected by Camps or his successors *on this new land* that *is* (was) *granted to him*, which buildings must be torn down at the expense of Camps or his successors when at the discretion of the supreme authority the military good so requires it.

But our opponents say that the petition recited in the preamble of the grant shows that Camps applied for only the concession of the land by him filled in, and that it should therefore be inferred that only the land filled in was granted and nothing more.

We reply:

First. The only thing that clearly appears in the grant as to what was asked for by Camps is that *he applied for the grant of a parcel of land 200 brazas long by 100 brazas wide on the lowlands along the northern bank of the Pasig River.*

Second. It is evident that the recitals as to Camps' application in the preamble of the decree are not accurate or complete.

Third. The Governor, in deciding favorably upon Camps' petition, intended to and did grant him rewards and favors* for meritorious services, and there was nothing to prevent the Governor, in the exercise of the sovereign power, from being generous with Camps. He could give him more than he asked for if he wanted to. It appears from the recitals of the grant that the old gentleman had previously been refused the privilege of buying some unappropriated land and that this was coupled "with the offer of protection." We take this to mean a promise to give him later on something just as good, or better, in recognition of his merits and services. The word "same," occurring in that part of the Record here alluded to (R., 77, last line) should be *sale*. See the Report of this case in 10 Phil. R., 529.

Grants of land by Spanish Colonial Governors in pursuance of this wise and generous policy of rewarding faithful public servants are familiar to this court. As to Camps himself he is referred to in the grant as an *oficial primero jubilado* of the Superior Civil Government. The last three words have been translated literally. The word "Gobierno" (literally Government) here means "Office of the Governor" (of the Philippines) "oficial," of course, means an official; "primero" indicates that Camps was an official of the first class and "*jubilado*" means retired on account of age and long and meritorious service. So that "*oficial primero jubilado* of this (the Governor's) office," means that Camps had served perhaps many years in the office of the Governor and had been allowed to go on the retired civil list because of age and long and meritorious service. Note also that the only

* See law 5, title 3, book 3, Laws of the Indies, allowing governors of colonies to grant "rewards, favors, etc." (cited R., 82; also 10 Phil. R., 536).

consideration recited in the deed (R., 77, or 10 Phil. R., 529) is the public service, industrial and official, theretofore performed by the beneficiary in the grant. Says the clause referred to, "taking into consideration the circumstances and official and industrial merits of the said Don Jose Camps."

Since the sovereign authority could have granted Camps, without any application from him, as many "rewards and favors" of the kind in question, as that authority might have chosen, which concessions would have been perfectly valid as soon as Camps had accepted them, it follows that one should not depend on the casual recital of the contents of Camps' application, contained in the preamble of the decree making the grant, but should consider only the grant itself, that is to say, the substantive part of the decree, just as in a judgment of a court, in which the decision is contained in the substantive part, and not in the wherefore and whereas recitals; and it is precisely the substantive part that is put into execution and nothing else. So much so that the substantive part loses none of its executory force if inconsistent with any wherefore or whereas recital, unless the said substantive part be in itself ambiguous.

Now, then, let us apply a little common sense, independently of those rules of legal construction which experience has formulated, in order to get at what the Governor intended to do for this faithful old public servant.

It was no small task—this of reclaiming 8,000 square yards—say 16 acres, or more than three times the space covered by the vast building in which the Supreme Court of the United States holds its sessions. In fact we do not know how deep the water was, nor does it appear that either Camps or the Governor knew. Very probably they did not. Nor do we know what the facilities for getting labor were. This does not appear. We do know that they have a long rainy season in Manila, and that the Pasig is subject to freshets during the rainy season in Manila, and we do know that the

work of reclaiming land at the mouth of such a tropical river could not go on during the rainy season. And we do know this work was to be done by private enterprise with (undoubtedly) very limited capital.

The grantee was a superannuated Government official with a highly meritorious record in the public service (That is exactly what the Spanish words by which he is referred to in the deed mean—oficial primero jubilado) and naturally, in his old age, the Government authorities were quite pleased to do him a favor by granting him something which was of no present value to anyone. It is quite possible that the Governor had no idea, when he signed the grant, that Camps would ever live to see all those sixteen acres reclaimed. It appears, however, that Camps was a man of some means; was head of a manufacturing firm composed of himself and his sons (Camps & Sons was the firm name). He was in a position to improve and make profitable to himself and to the State property which was at the time of no use to any one. It was a graceful as well as an inexpensive thing for the Government to do, under the circumstances—to give him this land. He would probably begin the work and accomplish some fraction of it in his lifetime anyhow, and after that his sons would doubtless take up the work where he left off. The theory of our adversaries is a house of cards The deed shows on its face a good (and therefore a binding) consideration, viz., the gratitude of a Government toward a faithful public servant advanced in years and retired from the service on account of age. The same "good" consideration was held binding in the Fremont case from California, 17 Howard, 542, easily the leading case on this general subject to be found in the reports of this court. If the Government had not intended to give Camps this property outright, why did not they tell him so in the deed. If he and his tenants reclaimed enough to make a respectable "waterfront," with a series of private wharves, was he not adding to the value of the adjoining property upon the idea of in-

creasing his own assets? Would the Spanish Government sit by and see him do this and then without warning step in and seize the fruits of his labor? Was any time limit fixed, or any forfeiture clause inserted? It is not difficult even for one who was not yet born when this grant was made, to perceive its intent and purpose as clearly and absolutely and confidently as if he could confer today orally with both grantor and grantee. That no time limit was fixed within which the submerged land, or any fractional part thereof was to be reclaimed shows that time was not of the essence of the contract. There is no automatic prodding arrangement connected with this instrument, like some of the provisions found in many of the Florida land grants, requiring the grantee to have this, that or the other accomplished by a specified time under pain of forfeiture.

Any lawyer who is familiar with Spanish land grants, no matter whether that familiarity was acquired by *"lucubrationes viginti annorum"* focussed upon the decisions of this court in the Florida Cession, Louisiana Purchase, and California Conquest cases, or by the humbler method of practicing law in Spanish-speaking countries, knows that the words "upon pain of nullity" (*bajo pena de nulidad*), or their equivalent, are almost as common in Spanish conveyancing as the penalty clause in one of our court subpœnas, and that its absence is a sure sign of an absolute and unconditional transfer of title out of the grantor into the grantee.

Before an obligation can be held to contain a condition it is necessary that something would result from the fulfillment or non-fulfillment of the supposed "condition"; otherwise, the supposed condition would not have the effect of modifying or extending the reach of the obligation, a requisite essential to every condition (Decision of December 24, 1866).

Now, then, applying this principle to the grant in question: What would result in law from failure to fill in the land? Cancellation of the title to the ownership thereof?

The grant does not say so. It is not permissible to attribute bad faith to the Supreme Authority—yet hiding in a grant of "rewards and favors" a condition which would have caused the loss to grantee, unawares, of all the royal favors awarded him, that authority not warning him clearly, at the time of the delivery of the grant, as to the existence of that imminent danger, would certainly be bad faith. Such a thing may be assumable in a private contract between merchants, in which the assignor tries to profit by means of deceit, but is not even conceivable in a grant from the Sovereign power, the object of which is to reward with royal concessions the services of a worthy subject. Therefore the following principle announced by the Supreme Court of Spain is exactly applicable to the present case: "According to the rules for the interpretation of contracts, any interpretation which would nullify a contract should be avoided instead of sought" (Decision of February 25, 1865). And again: "The wording of the conditions of a contract can not be given a construction which, being contrary to the object and purpose of the contract, would be a repeal of the obligation expressly and conclusively contracted" (Decision of March 11, 1870).

What would be left of these rules of interpretation if, perverting the clear words of this unconditional and absolute conveyance of this property, a condition were to be grafted upon it by sophistry?

That the Spanish Government was unwilling to procure the cancellation of a grant of royal concessions by means of similar tergiversation of the sense of the words, and that it always interpreted the doubtful and vague clauses favorably for the grantee, is evident in Auto (Decision) No. 80 of the Council of Indies (published by Coronado in his "Legislacion Ultramarina," Vol. 2, p. 236), which is as follows:

> "In regard to an inquiry from the Council re-
> "questing explanation of the concession of a pension
> "of three or four thousand ducats, His Majesty

" deigned to give the following answer: '*My resolu-
" tions shall always be construed as meaning the
" most.'"

That is to say: There was a doubt and His Majesty answered that: If there be doubt in my decisions, such doubt should "always" be decided in favor of the grantee, so that he may receive "the most" (the maximum amount).

It should not be forgotten that this is an authoritative construction.

And the same is evident from the law XI of title XII, book IV of the laws of the Indies, which is as follows:

"Taking into consideration that which may benefit
" our subjects most, we order and direct the Viceroys
" and Presiding Governors that they shall not alter
" the status of *lands granted* by their predecessors,
" and that they let the owners thereof enjoy the peace-
" ful possession of the same." * * *

And likewise from the law VII, title XXVI, book VII of the Novisima Recopilacion, which is as follows:

"We command that any Council or private person
" who closes or obstructs channels and rivers, within
" the boundaries of cities, over which vessels and fish-
" ermen navigate, and which other persons and the
" residents of the town generally utilize whenever
" necessary, shall pay a fine of six hundred *maravedis*,
" and within thirty days from the date on which
" notified, shall remove the obstruction at its or his
" own cost, and in such a manner as to restore the
" channel or river to its former condition; and this
" command shall be complied with, under penalty
" to be imposed by Our Majesty. *This provision shall*
" *not apply to persons who hold concessions, granted*
" *by our Royal Predecessors to execute the acts herein*
" *prohibited, but such exemption shall be considered*
" *as hereditary rights.*"

It cannot be alleged that this last beneficent manifestation of the Sovereign Will was not applicable to the Philippine Islands, because Law II, Title I, Book II, the Laws of the Indies, says:

> " We order and command that in all cases, matters " and suits at law the manner of dealing with which " is not provided for by this Compilation or by De- " crees, Orders or Ordinances, enacted and still in " force in the Indies, and those whose enactment may " be directed by Us, the laws of Our Kingdom " of Castile, in accordance with the Law of Toro, " shall be observed both as to the substance, resolu- " tion and decision of such cases, matters and suits, " and as to the form and procedure of trying the " same."

But it seems that the Court of Land Registration was of the opinion that the motives of the grant in this case indicate a tacit condition, because it says in its decision (R., 68, last line, and 69):

> " The above quoted words are clear and leave no " room, in the opinion of this Court, for any other " interpretation. Their scope is perfectly defined by " the well specified reasons set out in the grant.
>
> " This grant was not made simply on account of " the official and industrial merits of Jose Camps and " the promise of protection referred to in the Decree " of November 4, 1858, when his offer to buy an ir- " regular tract of land adjoining the New Cuartel del " Carenero was refused, but because it would benefit " maritime trade and greatly improve that part of " the City if the iron works, foundry and factory of " nautical instruments were built upon the land " sought to be filled in, as claimed in the Reports of " the Mayor of this city and the Director of Public " Works of the Province, and, further, because it " would be very convenient to the shipping interests " as stated by the Commanding Officer of the Navy " and by the Captain of the Port. Hence, the reason " for the grant was not simply the desire on the part

"of the Government, to reward the official and in-
"dustrial merits of the grantee, but to encourage
"maritime trade and promote the shipping interests
"and to improve that part of the city by filling in
"the land along the water front then covered by the
"sea.

"We can find no other reason for the grant. Its
"subject was land belonging to the public domain,
"devoted to public use as a part of the beach. The
"deprivation of the use of the land, which is the
"subject of the grant, by the citizens and residents,
"can only be explained upon the ground that it
"would mean an improvement to that part of the
"city and encourage maritime trade."

So that the judge who presided in the trial court assumed to estimate the relative motive power of each of the mental currents, which, combined, moved the Governor to make the grant, which is hardly practicable, unless it were possible to ascertain what part of the land was granted in consideration of each one of said motives, because that part granted to Camps in consideration of his public services and the "promise of protection," was not subject to the condition alleged by the court and was irrevocable.

Furthermore, the reports commented upon and alleged by the court to be the motives of the grant,* did not have for their purpose the ascertaining of whether or not it was convenient to grant the ownership of the land, but only the finding out if the permission to fill in and build on the land granted, would cause any hindrance to navigation, to the preservation of the port, to public defense, to the embellishment of the city, or to public convenience. And from these reports it appears that public use in respect to those purposes was of no importance, because all the officials consulted reported unanimously that the public needed not the land, for it wa-

* The favorable reports made, preliminary to this grant, by the Mayor, the Superintendent of Public Works, the Captain of the Port, and the Senior Naval Officer present (R. 69).

far from the houses situated on the Binondo beach, and that the permission to fill in instead of being detrimental would be beneficial.

But the argument advanced by the trial court in support of his views is precisely that offered by the United States Attorney-General against a Spanish grant in the case of U. S. *vs.* Rodman, 15 Pet., 130.

In that case Don Roberto McHardy, a resident of the Province, making a statement of the valuable services he had rendered to His Majesty (the King of Spain) and of some losses that he had sustained, said: *That it was his intention to invest his capital in the construction of a hydraulic saw-mill, as there was very little lumber produced in the province, for local consumption as well as for export,* and with that end in view he applied for a grant for the place called "Manantial Appreeile," etc., and the Governor, granting McHardy's request, in San Agustin, Florida, said, on November 8, 1814:

> "Whereas, the merits, services, and other circumstances which the interested party exposes in this representation, are well known to me, *in consideration of the advantages which will result in favor of the home and foreign trade* of this province, and also in conformity to the provisions of the Royal Order, or the 29th of October, 1790, communicated to the Government by the Captain-General of the Island of Cuba and of the two Floridas, in relation to the distribution of lands to the new inhabitants, I have come to the determination of granting to the petitioner, in absolute property, the square of five miles of land in the designated place, without prejudice to a better owner, and for the attainment of which let the Secretary's office issue to him a certified copy of this expedient and decree, which in all events will serve to him as a title in form."

The mill was not built and the United States Attorney-General contested the grant, alleging that it had been made on the tacit condition that the grantee should build on the land a hydraulic saw-mill, which condition had never been

complied with, and that it concerned the claimant to explain why the condition was not complied with. The court said:

> "A careful perusal of the memorial, will show it " certainly was not the intention of the memorialist " to make the building a mill the inducement to the " grant, but his merits, services, imprisonment, and " loss of property. When too, the Government, in " the grant, precedes the declaration of the advantages " which will result in favor of the home and foreign " trade, by an acknowledgment of the petitioner's " merits and services; it certainly *cannot be inferred* " from the first, *that it was the sole consideration* " *which induced the Governor to make it.* If it be not " so, *then it cannot be said that the grant would only* " *be perfect upon the performance of a condition pre-* " *cedent;* because another consideration or induce- " ment for making it is given, requiring nothing to " be done by the petitioner. *Indeed from these ex-* " *pressions of the Governor in the grant, no condition* " *can be inferred. They are a mere recital; and if a* " *condition could be implied, it would be so inconsis-* " *tent with an absolute grant in terms, that it could* " *not for a moment have any weight against it.* But " the objection is not new in this Court. The point " has been directly decided in The U. S. *v.* Segui, 10 " Peters, 306. The claim in that case was founded " upon a grant of 16,000 acres in consideration of " services to the Spanish Government, and *for erect-* " *ing machinery for sawing timber.* The court says, " 'It has been suggested by the Attorney-General, " 'that though there was no express condition in the " 'grant, one was implied from the consideration in " 'part being the erection of a saw-mill. But *we can-* " '*not attach any condition to a grant of absolute* " '*property,* in the whole quantity. *It was exclusively* " '*for the Governor to judge of the conditions to be* " '*imposed on his grant.* He appears to have con- " 'sidered the services of the appellee a sufficient con- " 'sideration and made the grant absolute.' " (The italics are ours.)

These decisions were rendered in cases instituted before courts especially created by Congress so that the grantees might secure the judicial ratification of their titles, which cases were tried substantially in accordance with the same procedure prescribed in the Philippine Land Registration Act, and were finally brought before the Supreme Court by appeals taken by the United States Attorney-General.

But the court below is very much mistaken in holding that the grant was issued to Camps in consideration of its usefulness to the maritime commerce and its convenience to public adornment, because it appears merely that the mayor, after hearing the Director of Public Works of the province, was of the opinion that the utilization of this particular parcel of unappropriated land then covered by the waters of the sea was not objectionable. "*And the parcel being far from the houses situated on the Binondo beach,*" the mayor reported that the concession, instead of being detrimental to the municipality, would be useful to maritime commerce and convenient for the purpose of public adornment, etc., which report was referred to in the preamble of the decree *only by way of quotation*, because when the Governor comes to the part where he bases his action, after stating it and other things concerning the application, says, in a complete sentence, separately and independently: "*Taking into consideration the circumstances and the official and industrial merits* of the said Don José Camps, *and the offer of protection*, stated in the decree of November 4, 1858, when refusing the sale, asked for by him, of an irregular piece of land, etc., and in conformity with the above-mentioned reports of the Commanding General of Marine, the Subinspector of Engineers, and Civil Chief of the Province of Manila, *I hereby decree:* Don José Camps, *Comisionado de Guerra Honorario, Official Mayor Jubilado* of the Secretarys' Office of the Supreme Government, * * * is granted the possession and ownership, etc.," thus showing most evidently that the *motives* that induced the Governor to issue the grant were *the official*

and industrial merits of Camps and the *offer of protection* mentioned in another decree when he was refused the issue of another concession, and that to the Governor the reports of the said official were important only in so far as they showed that, in accordance with the royal orders of September 10, 1815, and February 13, 1845, and the ordinances of the ayuntamiento (municipality) of Manila, there was no military, maritime or police objection to the filling in of, and *building on*, the land, the latter (the authority to build) being that which was more nearly related to and dependent upon the report of the mayor, based, as it was, on the opinion of the Director of Public Works.

That the cause stated in the grant by the Governor of the Philippines as the motive for the grant is very meritorious in law may be seen by reference to law VII, title IV, book IV, of the Laws of the Indies:

> "It is Our will and pleasure to reward those who
> " may have served Us in the discovery, *pacification*
> " *and colonization of the Indies*, and in order that
> " they may readily secure the reward, without preju-
> " dice to the worthier ones, We command the Vice-
> " roys and Presidents to grant such rewards when
> " there be occasion thereof, in accordance with Our
> " powers and instructions, etc."

See also the decision of the Supreme Court of the United States in the case of Freemont *vs.* U. S., 17 How., 544 *et seq.*, dealing with a Mexican grant worded as follows:

> "Whereas, Don Juan B. Alvarado, Colonel of the
> " auxiliary militia of this department, *is worthy, for*
> " *his patriotic services, to be preferred* in his preten-
> " sion for his personal benefit and that of his family,
> " for the tract of land known by the name of the Mari-
> " posas, to the extent of ten square leagues (sitios de
> " ganado mayor) within the limits of the Snow
> " Mountain, (Sierra Nevada) and the rivers known
> " by the names of the Chanchilles, of the Merced, and
> " the San Joaquin, the necessary requirements, ac-

"cording to the provisions of the laws and regula-
"tions, having been previously complied with, by
"virtue of the authority in me vested, in the name of
"the Mexican nation, I have granted to him the afore-
"said tract, declaring the same by these presents his
"property in fee subject to the approbation of the
"most excellent the departmental assembly, and to
"the following conditions:

"1. He shall not sell, alienate, or mortgage the
"same, nor subject it to taxes, entail, or any other
"incumbrance.

"2. He may inclose it without obstructing the cross-
"ings, the roads, or the right of way; he shall enjoy
"the same freely and without hindrance, destining
"it to such use or cultivation as may most suit him:
"but he shall build a house within a year, and it shall
"be inhabited.

"3. He shall solicit, from the proper magistrate,
"the judicial possession of the same, by virtue of
"this patent, by whom the boundaries shall be
"marked out, on the limits of which he (the grantee)
"shall place the proper landmarks.

"4. The tract of land granted is ten sitios de
"ganado mayor, (ten square leagues,) as before men-
"tioned. The magistrate who may give the posses-
"sion shall cause the same to be surveyed accord-
"ing to the ordinance, the surplus remaining to the
"nation for the proper uses.

"5. Should he violate these conditions, he will lose
"his right to the land, and it will be subject to being
"denounced by another.

"Therefore, I command that these presents, etc."

And the court, speaking through Chief Justice Taney, on page 557, says:

"There can be no question as to the power of the
"governor of California to make the grant. And it
"appears to have been made according to the regular
"forms and usages of the Mexican law. It has con-
"ditions attached to it; but these are conditions sub-
"sequent. And the first point to be decided is,
"whether the grant vested in Alvarado any present

" and immediate interest; and, if it did, then, sec-
" ondly, whether anything done or omitted to be
" done by him, during the existence of the Mexican
" government in California, forfeited the interest
" he had acquired, and revested it in the govern-
" ment? For if, at the time the sovereignty of the
" country passed to the United States, any interest,
" legal or equitable, remained vested in Alvarado or
" his assigns, the United States are bound in good
" faith to uphold and protect it.

" Now, the grant in question is not like the Lou-
" isiana and Florida concessions—a mere permission
" to make a survey in a particular place and return
" a plan of the land he desires, with a promise from
" the government that he shall have a title to it when
" these things are done.

" But the grant, after reciting that Alvarado *was*
" *worthy, for his patriotic services*, to be preferred in
" his pretension for his personal benefit and that of
" his family, for the tract of land known by the
" name of Mariposas, to the extent of ten square
" leagues, within certain limits mentioned in the
" grant; and that the necessary requirements, ac-
" cording to the provisions of the laws and regula-
" tions, had been previously complied with, proceeds,
" in the name of the Mexican nation, to grant him
" the aforesaid tract, declaring the same by that in-
" strument, to be his property in fee, subject to the
" approbation of the departmental assembly and the
" conditions annexed to the grant.

" The words of the grant are positive and plain.
" They purport to convey to him a present and im-
" mediate interest. And the grant was not made
" merely to carry out the colonization policy of the
" government, but *in consideration of the previous*
" *public and patriotic services* of the grantee. This
" inducement is carefully put forth in the title papers.
" And, although this cannot be regarded as a money
" consideration, making the transaction a purchase
" from the government, yet it is the acknowledgment
" of a just and equitable claim; and when the grant
" was made on that consideration, *the title* in a court
" of equity *ought to be as firm and valid as if it had*

"*been purchased with money,* on the same condi-
"tions. * * *

"Regarding (p. 560) the grant to Alvarado, there-
"fore, as having given him a vested interest in the
"quantity of land therein specified, we proceed to
"inquire whether there was any breach of the con-
"ditions annexed to it, during the continuance of the
"Mexican authorities, which forfeited his right and
"revested the title in the government.

"The main objection on this ground is the omis-
"sion to take possession, to have the land surveyed,
"and to build a house on it within the time limited
"in the conditions. It is a sufficient answer to this
"objection to say, that negligence in respect to these
"conditions and others annexed to the grant does
"not of itself, always forfeit his right. It subjects
"the land to be denounced by another, *but the con-*
"*ditions do not declare the land forfeited to the*
"*State upon the failure of the grantee to perform*
"*them.*

"The chief object of these grants was to colonize
"and settle the vacant lands. The grants were
"usually made for that purpose, without any other
"consideration, and without any claim of the grantee
"on the bounty or justice of the government. But
"the public had no interest in forfeiting them even
"in these cases, unless some other person desired, and
"was ready to occupy them, and thus carry out the
"policy of extending its settlements."

(This decision will be useful further on, when we take up other questions dealt with in this brief.)

It is thus seen that this court, besides declaring in the Fremont case that the cause of the grant—Alvarado's services—was as good as if it had been a money consideration, has again applied to this sort of grants the Spanish principle, which says:

"The efficacy of contracts cannot go beyond the
"conditions expressed in them, and if there be doubt
"on this point that doubt should be resolved against
"the existence of obligations which do not appear to

"be clearly stipulated."—Decision of September 23, 1885.

This same doctrine is reflected to a greater extent, if possible, by the American jurisprudence.

For instance:

A grant of land which had been used as the cemetery of a town, "to be used as a cemetery for ever," in consideration of love and affection and several other valid considerations, is not a grant subject to conditions.—*Rawson vs. Inhabitants of School District*, 90 Mass., 125.

In *Thornton vs. Trammell*, 39 Ga., 202, a conveyance of absolute fee-simple estate in a parcel of land contained the following clause: "It being expressly understood that the said tract or parcel of land is not to be put to any other use than that of a depot square, and that no business or improvements are to be put on the said tract but that which is immediately connected with the Western and Atlantic Railroad."

Warner, J., speaking for the Court, said:

> "The conveyance itself is an unqualified grant of "the land to the grantee. The words of the grantor "in conveying the land to the grantee impose no "conditions upon the latter, which *would be com-* "*pulsory on him*, to do any act whatever. *Independ-* "*ent of the understanding* or covenant of the parties, "as expressed in the deed, there is nothing in this "conveyance to distinguish it from any other deed "of bargain and sale, conveying an absolute fee- "simple estate in a tract of land. There being *no* "*condition expressed* in the grant of the land to the "grantee, by the grantor, of course, there can be no "forfeiture of the grantee's estate therein for condi- "tion broken." * * *

Devlin on Deeds says:

> "SEC. 978. The courts will not construe an *estate* "to be *upon condition, if the language of the deed*

"*will admit of any other reasonable interpretation.* "Thus, a deed made in consideration of a sum of "money, and the performance of certain agreements "contained in an indenture annexed to the deed, "providing for the support of the grantor and his "wife, is not a deed upon condition subsequent."

In Sec. 977 the same author says:

"The property conveyed may be restricted to cer- "tain uses. A deed conveyed land by metes and "bounds, and at the close of the description con- "tained a clause 'conditioned' that no building or "erection is ever to be made on the land conveyed, "except a dwelling-house and outbuildings for the "same, or such other buildings as would not affect "the privileges of the grantor to a greater degree than "would the erection of such dwelling-house and out- "buildings, and conditioned also that no building "more than a certain distance beyond the line of the "grantor's house should ever be erected. The clause "containing these restrictions was held to constitute "neither a condition precedent or subsequent, nor a "covenant, * * * *but that it was a part of the "description of the estate conveyed and showed what "rights passed to the grantee,* and what were re- "tained, and that subsequent purchasers from the "grantee could not erect the prohibited buildings."

In Sec. 990 *Devlin* says:

"Where a deed conveyed land bounded on one "side by a street, and on the other by a railroad, and "contained the clause, *subject to the condition* that "no building shall ever be placed on that part of "the same lying within twenty-five feet of said street, "and, also, that the present occupant of a part of the "premises near said railroad for a lumberyard shall "be allowed the time until October 1st, next, to re- "move his lumber and evacuate the premises, but "no longer without the consent of said grantee, both "clauses take effect only by way of restriction."

In section 991 he says (this is applicable to several limitations of our grant, as will be seen further on):

> "Where a restriction is imposed for a certain purpose, and the object for which the restriction was made is afterward abandoned, the land may become free from the restriction. Thus, land lying between two streets in a city was divided up by the corporation owning it into lots, and sold at auction. Among the terms of the sale was the provision that 'between the lots there shall be a railway fourteen feet wide, to be for the common benefit of all the lots bounding on it, to be used for no other purpose than a railway, and no building is ever to be built over it.' By the deeds, afterward executed the fee to the middle of this strip of land was conveyed, with the easements and subject to the restrictions named in the terms of the sale. On this strip of land railway tracks were afterward laid, but subsequently its use for a railway ceased. An owner of one of the lots commenced a suit in equity, more than twenty years after the abandonment of the land for railway purposes, to compel the removal of a structure on the land of the defendant. The court held, however, as to the strip of land reserved for a railway, the defendant might use his land in any way he desired."—*Bangs vs. Potter*, 135 Mass., 245.

It is thus seen that, unanimously all over the world, justice discountenances such conditions as might tend to annul grants, acts or contracts already consummated; that whenever possible it makes them void if they cause the forfeiture of a right, and that, instead of seeking means and words to invent conditions by interpretation, it always avoids such procedure disregarding any alleged condition that is not clearly expressed in the contract.

But in our grant, which is far from having even traces of a condition that would cause the forfeiture of the title granted, we find nothing but limitations and restrictions

necessary because the lowland granted is situated in a port and within the military zone and jurisdiction of a municipality.

III.

IF THE OWNERSHIP OF THE LAND WAS GRANTED ON CONDITION THAT IT BE FILLED IN, AND NO PERIOD WAS FIXED WITHIN WHICH THE GRANT WAS TO BECOME VOID BY THE MERE LAPSE OF TIME IF THE FILLING IN OF THE LAND WAS NOT COMPLETED AT THE EXPIRATION THEREOF, WOULD THE GRANT BE SUBJECT TO ANNULMENT AT THE WILL OF THE SPANISH GOVERNMENT, OR WOULD IT BE NECESSARY FOR SAID GOVERNMENT TO PRESCRIBE PREVIOUSLY A REASONABLE PERIOD OF TIME AT THE EXPIRATION OF WHICH, IN CASE THE FILLING IN OF THE LAND WAS NOT COMPLETED, THE GRANT SHOULD CEASE AND DETERMINE AND ALL RIGHTS CONFERRED THEREUNDER EXPIRE?

The last paragraph of section 1118 of the Spanish Civil Code, although not in force at the time when this grant was made, contains a principle of universal law that has always been applied in practice:

> "When there is no fixed time, the condition shall "be considered as complied with, within the time "which should probably have been fixed, consider- "ing the nature of the obligation."

Clearly, the grant itself furnishes no basis to enable any one to determine what period the Spanish Governor would probably have fixed, if he had fixed any; and the Spanish Government never took any action showing any desire to cancel the grant.

In order to ascertain what the intention of the Governor was in this particular, it is necessary to know something of the purposes to which the Spanish Government devoted its unappropriated lands.

We have already seen that formerly the unappropriated lands were set aside by the ordinances of Philip II for the purpose of granting them to those who came to settle in the country, or for any other purpose that suited the royal will.

This royal will was soon manifested in a fixed established policy of conveying the lands to private individuals to the end of promoting the development of the colonies, and with this end in view proceedings for securing grants were instituted from time to time. The quoting herein of those proceedings would lengthen this brief more than necessary because a great part of the compilation known as "The Laws of the Indies" is devoted to the issue of royal grants to encourage the colonization and development of the colonies. In fact, this desire to develop the colonies became such that all the lands belonging to the crown and situated in the colonies were devoted exclusively to the realization of that desire, and to the purpose of rewarding meritorious services in those far-away countries.

Taking this time-honored policy into consideration, it would be strange if the Spanish Government were to contest a grant under pretext of non-compliance with some condition, *unless there was an opportunity to use the land more advantageously, in the realization of its purpose, by granting it to another settler or company who would contribute more to the development of the country, regarding always the requirements of public defense;* for this latter reason the only conditions limiting the use of the land in question were directed to make provision for said requirements of public safety.

There is also the further obvious consideration in this connection, viz., that a grant like the one in litigation here in this case was in line not only with *the desire to populate*

and develop the country, rewarding industrial merits, *but also with another purpose more desirable still, to wit: The encouragement of military and civil services* by means of royal grants.

To corroborate what has been said regarding the desire of the Government to convey lands of the public domain to private persons, besides the provisions already quoted, the Laws I, IV, V, and X, Book IV, Title XII, of the Laws of the Indies, may be cited, among others. They are as follows:

"LAW I. In order to encourage Our subjects to "explore and populate the Indies, and that they may "live with the comfort and convenience that We de- "sire for them: It is Our Will that houses, home- "steads, sites, lands, manors and villeinages shall be "granted to those who go to settle in new countries, "in the towns and places that the Governor of the "new country may designate, making distinction be- "tween esquires (escuderos) and villeins (peones), "and those of lower rank and merit, increasing and "improving the grant in accordance with the value "of their services; and after they shall have estab- "lished their homes and work in the said lands, and "resided four years in the respective town, they shall "have the right to sell the lands and dispose of them "as they please, just as if they were their own prop- "erty; likewise, according to their rank, the Gover- "nor, or the authority vested with Our powers, shall "entrust to them a number of Indians who shall "work in the lands in conformity with the provisions "of the law." * * *

"LAW IV. If in the lands already discovered are "places and regions so excellent that it be convenient "to found cities thereon, and any persons contem- "plate establishing themselves and residing there in "order that the said persons may carry out their pur- "pose more willingly and with greater benefit to "them, the Viceroys and Presidents shall grant in "Our name *lands, homesteads and waters,* without "prejudice to the interests of third parties, for so "long as may be Our pleasure."

"LAW V. *The distribution of the lands, waters,*

" *watering-places, and pasture lands, shall be made*
" *by the Viceroys, Governors, or Authorities invested*
" *with our power, with the advice of the City Coun-*
" *cils (Cabildos).*" * * *

"LAW X. Let the lands be distributed, in reason-
" able proportions, among the discoverers and old
" settlers and their descendants, who are to stay in
" the land, the worthier ones to have the preference."
* * *

The Decree of the Cortes (Congress) of Cadiz, of January, 1813, provides that:

"Whereas, *the conveyance of common lands to*
" *private ownership is one of the measures most*
" *urgently demanded by the welfare of countries and*
" *the promotion of agriculture and industries; and*
" *wishing, at the same time, to furnish, by means of*
" *this kind of lands, a help to public needs, a reward*
" *to the worthy defenders of the country,* and an aid
" to citizens who are not land-owners; Be it decreed
" by the General and Extraordinary Cortes, that:

"All public or unappropriated lands and all mu-
" nicipal and town lands, with or without trees,
" * * * in the provinces of the Colonies (Beyond
" seas) excepting the lands necessary for the com-
" mon use of residents of towns, shall be conveyed to
" private ownership."

The royal patent of August 10, 1815, in regard to grants in the Island of Porto Rico, published in "Legislacion Ultramarina" (Colonial Legislation), by Coronado, vol. II, p 235 *et seq.*, says in paragraphs 10 and 11:

"Each white person, of either sex, shall receive
" four and two-sevenths fanegas (1 fanega=1.59
" acres) of land, and each black or brown slave
" brought by the settlers shall receive one-half of that
" extension, and they shall be furnished with certified
" copies of their grant, which copies shall serve as
" their title of ownership.

"11. Free black and brown persons, who, as set-
" tlers, may establish themselves in the Island, shall

" receive one-half of the extension of land allowed to
" whites, and if they be accompanied by slaves owned
" by them, the extension of land shall be increased
" in proportion to the number of said slaves, and in
" equality to their masters, the documents of owner-
" ship being furnished to the masters as well as to the
" slaves."

The resolutions passed on January 8 and 24, 1816, published in the same volume of the work just quoted, article 4, page 240, in which resolutions it is said:

"Settlers admitted under these requirements may
" ask for, and they shall be granted in the name of
" the King, *gratuitously and forever*, the unappro-
" priated lands which may be assigned to them in
" accordance with the rules contained in arts. 10 and
" 11 of the Royal Patent of August 10, 1815."

The royal order of March 15, 1836, No. 5, on page 244 of the same volume, provides:

"5th. That Your Excellency, together with the
" said supreme authority, shall work towards the in-
" creasing of the white population, observing the
" provision contained in the Laws of Indies, and as-
" suring industrious foreigners that they shall receive
" protection, safety, and justice, with which induce-
" ment they shall settle in a country which promises
" them a fortune in exchange for their laboriousness.
"6th. Finally, Your Excellency shall assure those
" loyal inhabitants, in the name of His Majesty, that
" not because the term of the Royal Patent referred
" to has expired shall their welfare be impaired, but
" that, on the contrary, being included in the com-
" mon administrative law of the other Colonial Span-
" iards, *they shall secure greater guaranties to the*
" *end that they be not disturbed in the peaceful pos-*
" *session of proper advantages*, not through temporary
" and transitory grants, but through laws carefully
" prepared and arranged for the public good. Of
" which I advise you by Royal Order, for your in-
" formation and cognate reasons."

The royal patent, regarding the colonization of the Island of Cuba, which appears in the same volume, page 244, is as follows:

> "*The King.* Governor-Captain-General of the "Island of Cuba, and Intendent of the Army and of "the Royal Exchequer of the Island: In letters dated "the 17th and 18th of January of the current year, "you endorsed, as being of urgent importance to the "welfare and preservation of that invaluable Island, "a memorial from the Municipality, Consulate and "Economic Society of Havana, in which, making a "succinct statement as to the extent of the Island, "number and kind of its inhabitants, they show that "one of the most important possessions of my Royal "Crown is depopulated and defenseless, and that fields "are found uncultivated which, if cultivated would "yield the best products desired by other Nations; "and wherein they state that after having carefully "considered so important a matter, they find that the "only effective means of reconciling and meeting "such varied needs, *is the increase of the white pop-* "*ulation by the introduction of Spaniards from the* "*Peninsula* or from the Canary Islands, and in de- "fault thereof, Catholic Europeans from friendly "nations; to this end they request that I extend to "that Island the privileges granted to Porto Rico "in my Royal Patent of August 10, 1815, with its "explanations by the authorities of that province."

The action taken was favorable.

Numbers 2, 3, and 5 of the same patent, page 248 of the same volume, says:

> "2. It being strange to me that in that Island "lands are not offered to settlers, as it is done in "Porto Rico, this being the most effective means of "attracting the poor ones, who are the best suited to "the purpose, I instruct you to take the necessary "steps to remedy this need, specially in the eastern "section of the Island *where there ought to be more* "*unappropriated lands* and where at present *the ne-*

" *cessity of increasing the population of honest whites*
" *is most urgent.*

" 3. To this and the other ends connected with
" this great purpose, I direct you both to appoint
" three representative residents whose duty shall be
" to make recommendations as to what measures
" are conducive to the purpose and to interest others
" in the urgent and wise measures that should be
" taken.

" 5. The Spanish being preferable to the foreign
" immigration, that advisory board *shall without de-*
" *lay recommend to you the means of securing it*
" without noticeably impairing the population of the
" Peninsula, and the Balearic and Canary Islands.

" And, finally, it is my desire that, without preju-
" dice to the speedy execution of these Resolutions,
" it be the additional duty of my board to recom-
" mend all other measures conductive *to populating*
" *with whites* the Islands of Cuba, Porto Rico, and
" Santo Domingo."

Another resolution, dated March 6, 1818, page 248 of the same volume, says in its article 1:

" In order to facilitate the dispatch of applications
" for homesteads, filed by new settlers, representative
" residents shall be appointed to act as protectors and
" patrons of the individuals from each nation who
" upon their arrival may call on them; the said resi-
" dents, shall, after having studied the circumstances
" of the immigrants, make a report to the Govern-
" ment, and fulfill other duties with which they may
" be entrusted."

Articles 6 and 7 of the same patent of March 6, 1818, page 249, which are as follows:

" 6. As among these concessions there are those
" of *free distribution of lands* and *homesteads,* the
" board shall have charge of everything connected
" with important object, in regard to the selection of
" agricultural and industrial settlers as well as in re-
" spect to the regulations of police and order in ac-

"cordance with which they shall establish and settle "themselves, recommending to the Government "whatever it may deem convenient for persons and "localities.

"7. These provisions apply *not only to agricul-* "*tural settlers, but also* to artisans *in any art or in-* "*dustry* useful in the country; and not only to newly "arrived settlers, but also to those who are already "established in the city or in its suburbs, whether "Spaniards or foreigners, having the qualifications "prescribed by the rules."

The decree of September 12, 1882, is partially as follows:

"Government-General of the Philippines—Civil "Administration—Manila, September 12, 1882.—In "view of the interpellation sent to this office by the "Forestry Bureau as to the manner in which to apply "article 16 of the Regulation of June 15, 1880 in "regard to the *survey of public unappropriated* "lands; and in view of the opinions of the General "Bureau of Civil Administration, and of the Treas- "ury Department of the Philippine Islands in re- "gard to the said matter.—Whereas, it is necessary "to simplify as much as possible the procedure for "the adjustment of the amount that each individual "should pay for the traveling expenses and fees of "surveyors in the field; Whereas, it is necessary "to make the said article 16 clear in order to prevent "any inconvenience that might be caused to private "persons, and to make it so that the impost to be paid "by them may tax, in a proportionate and just man- "ner, the value of the property whose registration is "sought; Whereas, the urgency of the question, *and* "*the importance of the fact that the work of sur-* "*veying unappropriated lands must not be inter-* "*rupted nor suspended,*" etc. * * *

The foregoing certainly shows that it was the broad general policy of Spain toward her beyond-sea colonies to give freely, or at least on easy terms, to the inhabitants thereof,

any real estate they were willing to take hold of and improve.

If to all this we add the more important fact that the main, if not the only, object of the grant in this case was "not merely to carry out the colonization policy of the Government,"—as is said in Fremont *vs.* U. S., already quoted—*but in consideration of the military and civil services of Camps and to reward him for his industrial merits, as well as to give him a compensation for the inconvenience that had been caused to him by the refusal of the sale of another parcel of land* for which he had previously applied; if in conformity to the policy of the Kings of Spain prohibiting that their subjects in the Indies be disturbed on account of deficiencies in their grants, even if the grants had not been duly ratified by the Kings, Viceroys or Presidents (Art. 4 of the Royal Patent of October 15, 1754, "Legislacion Ultramarina" by Rodriguez San Pedro, 673), but, on the contrary, allowing the said subjects to continue enjoying the peaceful possession of the lands granted (Law XV of Phillip II, May 17, 1641), by any title issued by the Kings, and owning them "perpetually" (Law VII, Title XXVI, Book VII, Novisima Recopilacion), and that in the grants of royal graces "the most" was "always" understood in favor of the grantee; if it does appear that at the time when the concession was made there was no demand, nor has any ever been, for this kind of lands, of which there were plenty, in the Philippines, surrounded by the water of the sea, to such an extent that the Government—as it is said in Fremont *vs.* U. S., p. 461—"had no interest in forfeiting them * * * to carry out its policy of extending its settlements;" if, as it seems, not one single step was taken to ascertain what the depth of the water was in the land granted, in order to know the amount of work and material necessary to fill it in, and to estimate the time reasonably necessary to complete the filling in, then we must conclude that there is no foundation, in the decree, to determine what was the time that the Governor

might have intended to prescribe for the compliance with the condition, specially when there is absolutely nothing in the grant that refers to such a thing.

It will be observed that we have assumed that, if there be a condition in the grant in question, that condition is a subsequent one and not precedent, because, as has been said in the case of Fremont *vs.* U. S., already quoted, "The grant in question * * * is not a mere permission to make a survey (to fill in the land) in a particular place and return a plan of the land he desires (he fills in) with a promise from the Government that he shall have a title to it when these things are done," but the decree making the grant, after reciting the petition of Camps, an exact description of the land, the reports of the respective officials, *and taking into consideration the official and industrial circumstances and merits* of the said Don José Camps *and the offer of protection* stated in another decree, provides that: Don José Camps, *Comisario de Guerra Honorario, Oficial Mayor Jubilado in the Office of the Secretary of this Superior Government,* etc., *is granted the possession and ownership* of a parcel of land 200 brazas long and 100 brazas wide, etc., and the requested permission to fill in the same, "declaring the same (the parcel of land), by that instrument, to be his property in fee (together with the possession)." "The words of the concession are positive and plain. They purport to convey to him a present and immediate interest;" therefore, if there be a condition, it is a subsequent one and not precedent. (The sentences between quotation marks, excepting those in parentheses, are taken from the decision in the case of Fremont.)

That decision establishes beyond dispute that the condition, if it exist, must be a subsequent one.

And our case is much stronger in favor of the grantee than that of Fremont. In that one (Fremont's), were express conditions, with *specific time* for their fulfillment, and the possession was not conferred in the grant, but only the

permission to apply therefor to the proper authority; while in our grant the ownership was adjudicated and the possession conferred in the same decree, the grantee having been vested, in the most formal manner, with all the attributes of a pure fee; and the most that could be asserted in regard to conditions is that the land was granted and possession given to Camps that he might fill in the same at his expense. Hence to seek to attach to an absolute and unconditional conveyance of ownership and possession a condition either precedent or subsequent would be to repudiate a contract and disregard a promise rendering futile the solemn words of the Governor's decree in this matter and violating the legal principle that a tacit condition, inconsistent with the legal effect of the substantive part of a grant, cannot prevail.

> "It is not possible that, at the time when a contract
> " is entered into and legalized, the contracting parties
> " should have intended to render that contract null
> " and void by indirect, contradictory, and irregular
> " means." (Decision of May 28, 1866.)

As there is nothing in the task of filling in the land dependent upon any inherent quality possessed by Camps and not likewise possessed by his heirs, it cannot be said that there has been non-compliance by reason of Camps' death.—1 Pothier on Obligations, pages 116, 117, 118 and 119.—Art. 1111 of the Civil Code.

Having proven that the condition, if there be one, is without any time limit and that Camps' death would not be an obstacle to its compliance, let us go on to ascertain if the grant would be revocable at the discretion of the Government without previously fixing a time within which the grantee must comply with the condition.

The Spanish Civil Code, arts. 1128 and 1100, read:

> "ART. 1128. When the obligation does not fix a
> " time limit, but it can be inferred from its nature
> " and circumstances that there was an intention of

"granting to the debtor a period of time for carrying "his obligation, the Courts shall fix the duration of "such term."

"ART. 1100. Persons obliged to deliver or to do "something are in default from the moment on "which the creditor exacts, judicially or extrajudi- "cially, the compliance with their obligation."

We do not claim that these articles of the Civil Code are directly applicable to the question, but they do prove that the law does not permit anybody to be adjudged in default in the compliance with any obligation without previous warning, unless it had been expressly so stipulated in the contract.

In so far as this question is concerned, there is no difference between the fulfillment of an "obligation" and that of a "condition," and, if a person is bound by an obligation, without a time fixed expressly or tacitly, it is necessary that the creditor shall set a term or secure the fixing thereof by the court requiring him to fulfill the obligation within the time set, the length of which time should be in accordance with the nature of the obligation, and sufficiently long in order that the debtor may fulfill the obligation in view of the circumstances of the case.

So, in our case, if the land has been granted on condition that it be filled in, without a fixed time, it would not be practicable for the Government, after the greater portion of land has been filled in, and sold to its present owner for the amount of 32,000 pesos, to declare it forfeited, suddenly and arbitrarily, but in justice it should set a reasonable time for the completion of the filling in by the interested party, and then seize the land if the filling in has not been completed within the time set. A doctrine approving a contrary procedure would be as unjust as the condemnation of private property without just compensation to the owner.

If the law discountenances attaching to a contract by interpretation a condition which is not expressed therein, but

which if recognized as effective would work a hardship, there is still more reason why it should allow just and reasonable time for compliance with any condition it may now impose on the present owners of this property. It seems clear that it would be the duty of the Government, in case it should seek the cancellation of the grant on the grounds of non-compliance with a condition, to previously set a reasonable time for the fulfillment of the condition, confining itself to canceling the grant in case the condition shall not have been fulfilled within the time set.

"The law abhors a forfeiture."

The Philippine Acting Attorney-General, to prove that the grant was revocable, in his brief or argument before the Court of Land Registration, quoted the Royal Order (not Royal Decree) of September 19, 1876, published in Vol. 8, p. 134, which is as follows:

> "This resolution is based on the fact that *too long* "*a time has transpired since the expiration of the* "*term fixed in the grant* to commence the works, and "if the Government were to authorize, or consent to, "the use for an indefinite time of grants for the "utilization of waters or for the improvement of "puddle-lands, it would not only exercise its powers "immoderately and injudiciously, but also violate the "spirit of the laws in force on the subject, besides "causing in some cases, grave inconveniences to the "public good, because then other private persons or "corporations would be prevented from engaging in "works that may contribute to the development of "the agricultural and industrial wealth of the "country. * * *"

It is clearly seen in the decree just quoted that the grant to which it refers was made under the express condition that the works should be started within a certain time, which is not the case in the case at bar.

There is also another noteworthy consideration in this connection, viz., that when the speedy completion of works

concerns the public, it is customary to fix a term within which the works should be completed; and the fact that no time was fixed in the grant in question is another strong proof that our concession was not due, particularly, to the policy of development of the country, but to the desire of rewarding Camps' services and industrial merits, and of giving him compensation for the damages caused him by the refusal of the sale of another unappropriated piece of land.

Furthermore, the decree quoted by the Acting Attorney-General referred to a grant for land situated in Spain, where there was lack of land and surplus of applicants, the contrary being the case in the Philippines, where land was plentiful and applicants therefor few.

There is also another peculiarity in that decree, which is that the "laws in force" therein referred to are the Laws of Waters; and to the end that nobody may be deceived, it should be borne in mind that the said laws have no retroactive effect, because it has been thus expressly declared by the Supreme Tribunal of Spain in its decisions of July 8, 1882, and October 14, 1886. At the time when the grant in question was issued no laws were in force that imposed any conditions thereon.

Taking as proven that, even if there is a condition inhering in the grant, the grant is not revocable arbitrarily at the will of the Government, and that it would be necessary (because right and just) to set a reasonable time within which to comply with the condition, let us now ascertain:

First, if the Government has set a time, and

Second, if the Government has taken any action showing its intention to cancel the grant.

There is nothing in the records showing that the Government has fixed any time nor that it has required the grantee or his successors to complete the filling in of the land, nor that it has taken any action indicating its desire to cancel the grant. It appears, on the contrary, that the Spanish Government always regarded the grant as conveying the un-

conditional and absolute possession and ownership of the land, for the following reasons: Camps, during his lifetime, filled in quite a considerable part of the land and built houses thereon, which were occupied by tenants, who paid him rents, and he had used the land in several other ways. After his death, the land was sold at public judicial auction in 1877 to Don Juan Jover y Serra for the amount of 32,000 pesos. Before the sale was effected, Don Eduardo Vidal, representing Don Juan Jover y Serra, consulted verbally the opinion of the authorities as to the matter, and he said: "I sought the " opinion of the civil, military and maritime authorities then " in office, and, *all without exception,* told me that the grant was a *perpetual and perfect one.*" (R., 39.) The verbiage of our translation differs slightly from that in the record, but not materially.

This gentleman, when making the purchase, paid 32,000 pesos, not for the land, which was only worth from two to three thousand pesos, but for the grant from the Government to the heirs of Camps, which was worth the 32,000 pesos. (Rec., 38.) During the administration of Vidal there was a question with the maritime authorities, who had a little house within the land, used as lodgings by a watchman of the port. After an interview with the captain of the port and the General of Marine, those authorities recognized the validity of Vidal's claim, writing him a letter in which they acknowledged the ownership of the land (R., 37, 38). Vidal's administration lasted from 1877 to 1885. During all that time he was filling in and building on the land, utilizing it and receiving the rents, and this has continued since Vidal's administration right on up to the present date.

The land is recorded in the registry of deeds as being the unconditional and absolute property of the applicant.

It is situated on the right bank of the River Pasig, towards the bay near the lighthouse that guides the in-going and out-going vessels, in the neighborhood of the captain of the port's office, and within view of the Ayuntamiento Palace

and the offices of the highest officials of the Spanish Government, as may be seen in the plan attached to the record, the court knowing judicially the topography of the Port of Manila without necessity of presenting proofs (Art. 275 of the Code of Civil Procedure).

IV.

IF THE GRANT WAS A CONDITIONAL ONE, THE SPANISH GOVERNMENT NOT HAVING AVAILED ITSELF OF ITS RIGHT TO CONTEST THE SAME, CAN THE PRESENT GOVERNMENT DO SO? AND IF SO, CAN THE ATTORNEY-GENERAL OR THE CITY ATTORNEY OF MANILA, WITHOUT SPECIAL AUTHORITY OF THE CONGRESS OF THE NATION, CONTEST IT IN THE NAME THEREOF?

The possession and ownership of the land having been conveyed to the grantee, he held the title thereto, even if it had been subject to a condition, so long as the Spanish Government did not contest it on claim of breach of that condition.

We have already shown that the Spanish Government, up to the time of the exchange of ratifications of the Treaty of Paris, had not impugned the grant on the ground of noncompliance with a condition, nor had it ever manifested any intention of so doing. Wherefore the appellant, the successor of the grantee, had on the date of the treaty the complete ownership of the land, even conceding his title to have been held subject to a condition in favor of the ceding Spanish Government, because, so long as the latter, the only party with a right to do it, had not impugned the grant, nobody else could do so, and since that Government has not impugned it, the ownership of the land was not ceded to the United States by the treaty (decision of the Supreme Tribunal of Spain of March 18, 1872). The doctrine of that

decision is, as in justice it should be, universal and applicable to all kinds of transfers of property, as will be seen in the following quotations:

> "No one can take advantage of a breach of a condition subsequent but the grantor or his heirs. If they do not take steps to enforce a forfeiture of the estate on the ground of a breach of the condition, the title remains unimpaired in the grantee. This rule also prevails where a condition is inserted in a patent or grant made by the Government."
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> 2 *Devlin on Deeds*, sec. 969, and many decisions quoted in the foot-note thereto.

In *St. Paul, etc., Ry. Co. vs. Greenlaugh*, 139 U. S., 19, 22, the court said:

> "The road of the plaintiff under consideration here was not completed till November, 1878, and consequently the rights granted to the company were subject to forfeiture, or at least the company was subject to hostile proceedings, for breach of this condition attached by law to the grant. A mere breach of conditions does not of itself work a forfeiture of a grant; some other proceedings must be taken by the grantor to indicate his dissatisfaction with the breach and his intention to exercise his rights to revoke the grant and take possession of the property in consequence thereof."

And in the case of *Bybee vs. Oregon, etc., Ry. Co.*, 139 U. S., 663, 664, this court held that a railroad company does not lose the power to take possession of its rights of way by its failure to construct its road within the time limited by the act of Congress; that lands granted by Congress to aid in the construction of a railroad do not revert to the Government by reason of such failure until the Government shall have claimed the forfeiture, and that when a railroad company has a right of way over public lands, a person subsequently acquiring title to such lands, takes it subject to the prior right of the railroad company.

In that case a third party insisted that the company had lost its right by reason of non-compliance with the condition, and that, consequently, the land had reverted to the public domain; therefore the decision is perfectly applicable to the matter here in question.

In *U. S. vs. Southern Pacific Railway Co.*, 146 U. S., 570, the court, through Mr. Justice Brewer, said that nobody but the grantor can raise the question of the non-fulfillment of a condition subsequent.

In the case of *Ferris vs. Coover*, 10 Cal., 594, the grant was similar to that in the Fremont case, that is to say, to reward patriotic services, etc., and worded as follows:

> "I have, in conformity with the powers conferred
> " upon me, in the name of the Mexican nation,
> " granted to said Augustus Sutter, by these presents,
> " for himself and his colonists, the said land named
> " New Helvetia, subject to the approval or disap-
> " proval of the Supreme Government, and of the most
> " excellent Departmental Junta, under the following
> " conditions: * * *
>
> "4th. When this grant shall be confirmed, he will
> " ask the respective magistrate for possession of the
> " land, in order that it may be measured, according
> " to law, the surplus being left for the benefit of the
> " nation, for the uses which may be required.
>
> "I therefore command, etc. * * *"

Among other things, the Supreme Court of California held that the ownership of the land was conveyed to Sutter by the grant, subject to be defeated by the action of the Mexican Government affirmatively disapproving it, in case of non-compliance with the conditions, through proceedings to that end. The court, the decision being written by Mr. Justice Field, said:

> "The instrument does not confer a mere permission
> " to occupy the land described therein, but in terms
> " grants the land itself. * * *
>
> "The words of this instrument are plain. They

"import a conveyance of the land in full property,
"subject, indeed to be defeated by the subsequent
"action of the Supreme Government and Depart-
"mental Assembly. The clauses against the obstruc-
"tion of the highways and the navigation of the
"streams, are not properly conditions, but reserva-
"tions in favor of the public.

"The condition as to maintenance of the Indians
"of the different tribes in their possessions, and the
"conditions of the regulations of November 21,
"1828, requiring the cultivation and occupancy of
"the land with families, are necessarily conditions
"subsequent, which did not prevent the estate from
"becoming vested, *eo instante* with the delivery of
"the grant, and for a non-compliance with which the
"estate could *only* be divested *by the action of the*
"*Government.*"

Afterwards, speaking of those conditions, it says:

"They are conditions subsequent, for the non-per-
"formance of which the estate might have been de-
"feated by proceedings of the Government to that
"end; but until such proceedings were had, and a
"forfeiture declared thereon, *the estate remained in*
"*the grantee.* Under the Mexican law, as under the
"common law, an estate granted by the Government
"could not afterwards be divested upon mere allega-
"tions or surmises. *Some formal and regular pro-*
"*ceedings were requisite.*

"No re-grant ever was made upon a mere allegation
"that the condition of the former grant had not been
"performed, without an inquisition as to the fact."

In the case of *Vanderslice vs. Hanks,* 3 Cal., 28, a very similar one to that of Alvarado, the court said, among other things, that in a grant made on a condition subsequent, *where no time is limited for its performance,* so long as the grantor does not complain, the title remains *complete and perfect in the grantee, and is good against the world.*

The exact question here presented was forever settled in the case of Fremont *vs.* U. S. (17 Howard), wherein the

court, speaking of the conditions attached to the grant, after showing that the object of such conditions was to incite the grantee to take speedy action in populating and colonizing the grant, making the land subject to being appropriated to another person should he break those conditions, says on page 563:

> "*Nobody proposed to settle on it, or denounced the* "*grant for a breach of the conditions. And at the* "*time when the Mexican authorities were displaced* "*by the American arms, the right which Alvarado* "*had obtained by the original grant remained vested* "*in him, according to the laws and usages of the* "*Mexican government, and remained so vested when* "*the dominion and control of the government passed* "*from Mexico to the United States.*"

Article VIII of the Treaty of Paris, in so far as it concerns this question, is as follows:

> "In conformity with the provisions of articles I, II, "and III of this Treaty, Spain relinquishes in Cuba, "and cedes in Porto Rico and other islands in the "West Indies, in the Island of Guam, and in the "Philippine Archipelago, all the buildings, wharves, "barracks, forts, structures, public highways and "other immovable property which, in conformity "with law, *belong to the public domain, and as such* "*belong to the Crown of Spain.*
>
> "And it is hereby declared that the relinquishment "or concession, as the case may be, to which the pre- "ceding paragraph refers, *cannot in any respect im-* "*pair the property or rights which by law belong to* "*the peaceful possession of property of all kinds,* of "provinces, municipalities, public or private estab- "lishments, ecclesiastical or civil bodies, or any other "associations having legal capacity to acquire and "possess property in the aforesaid territories re- "nounced or ceded, or *of private individuals, of what-* "*soever nationality* such individuals may be."

Now, then, the land in question, on the date of the treaty, *did not belong to the public domain of the Crown of Spain,* but to this appellant. We might, for the purpose of this question, admit that he held it on a condition and yet not complied with and still it would continue to be his property, because the Spanish Government had not impugned it, neither on that account nor on any other, and, consequently, it was not included in the cession of "Immovable property which, in conformity with law, belong to the public domain and as such belong to the Crown of Spain," but, on the contrary, it came under the second paragraph which provides that the effects of the first paragraph "cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds * * * of private individuals, of whatsoever nationality such individuals may be."

Furthermore, this petitioner being a Spanish subject, native of the Peninsula, the grant was insured to him by article IX of the treaty referred to, which is as follows:

> "Spanish subjects, natives of the Peninsula, resid-
> " ing in the territory over which Spain by the present
> " Treaty relinquishes or cedes her Sovereignty, may
> " remain in such territory or may remove therefrom,
> " *retaining*, in either event all *their rights of prop-*
> " *erty*, including the right to sell or dispose of such
> " property or its proceeds. * * *"

This is very clear; but there is still more: The effect of a void grant, which is much less than that of complete ownership subject to a condition, is sufficient to segregate the land from the property of the public domain, and so long as the grant has not been cancelled, the Government cannot cede it to another.—*Roberts vs. Davidson,* 83 Ky., 291.

> "Whensoever a tract of land shall have once been
> " legally appropriated to any purpose, from that mo-
> " ment the land thus appropriated becomes severed

"from the mass of public lands; and *no subsequent*
"*law, proclamation, or sale would be construed to*
"*embrace it or to operate upon it* although no other
"reservation were made of it."
Wilcox vs. Jackson, 13 Pet., 498-513.

"Lands within the boundaries of an alleged Mexi-
"can or Spanish grant, which was then *sub judice,*
"*are not public.*"
Newhall vs. Sanger, 92 U. S., 761.

The above is nothing more nor less than the doctrine so many times established by the Supreme Tribunal of Spain, according to which: "Where the action is based upon the invalidity of an act or contract, the first thing that should be sought is the declaration of that invalidity." (Decisions of October 28, 1867; December 17, 1873; June 18, 1877; December 7, 1885; April 7, 1892; December 28, 1895; January 31, 1896.) That is to say, that the Government, having entered into "a contract in which concur the legal requirements, even if it contains one of the deficiencies which would invalidate it according to law," must invalidate its own act before it can exercise any right that may be based upon the nullity of its contract (Art. 1300, Civil Code); because a contract, even if it were subject to annulment, is not void, *per se*, nor can it be considered as such so long as the competent authority shall not have declared it so.

Or, according to the doctrine established by the Supreme Tribunal in its decisions of October 25, November 26, and December 7, 1873, "contracts should be held as valid until pronounced void by competent authority."

Since at the time when the Treaty of Paris was signed the Spanish Government had never annulled this grant, it was too late, after the treaty was signed, for the American Government to do so.

Lands which were conveyed by the treaty of the American Government, having been leased to private parties prior to the treaty, are among those the title to which did not

pass to the lessees, the title thereto remaining as a consequence in the public domain of the Crown of Spain. So the question will always be: "Who held the title on the date of the Treaty of Paris?" If it was held by the public domain it has been conveyed to the United States. But if prior to the treaty it had been conveyed to a private person, with or without a condition, the Spanish Government having failed to impugn it before the date of the treaty, then it was not included in the cession to the American Government.

It should not be considered that this effect of the Treaty of Paris is due to an error or oversight made by the high contracting parties. It was only natural that upon delivering her provinces to another sovereign Spain should not have wanted to transfer to this other sovereign the delicate exercise of her exclusive power of canceling concessions granted on conditions, which power she did not always exercise in accordance with the strict letter of the law, but guided by the justice and equity pertinent to each particular case. And the change of sovereignty could have been a source of great injustice in the exercise of that power, and a cause of grief to Spain at seeing her people deprived of rights that she would not have taken away from them had her sovereignty over those provinces continued.

Supposing that we are wrong as to the effect of the Treaty of Paris, and that the American Government is still entitled to exercise Spain's right to impugn the grant on grounds of the supposed conditions, it remains to ascertain if the Attorney-General and the attorney of the city of Manila can, without special authorization from Congress, bring an action to cancel this grant. It is probable that the legal doctrine already established is sufficient to answer this question in the negative, but, out of abundance of caution, we respectfully invite attention to the following decision of the Supreme Court of the United States.

In *New York Indians vs. U. S.*, 170 U. S., 24-25, it is said:

"In the view we have taken of the granting "clauses of this treaty (grant), the provisions of the "third article created a condition subsequent, upon "a breach of which the Government might declare "a forfeiture, but had no power by simple executive "action to re-enter, take possession of the lands, and "sell them. A distinction is drawn by the authori- "ties between the case of a private grantor, who may "re-enter in the case of the breach of a condition "subsequent, and the Government which can only "repossess itself of lands by *legislative or judicial* "*action.* The distinction was first clearly drawn by "this court in the case of *United States vs. Re-* "*pentigny,* 5 Wall., 211, 267, in which the court "said: 'We agree that before a forfeiture or reunion "with the public domain could take place, a judicial "inquiry should be instituted, or, in the technical "language of the common law, office found, or its "legal equivalent. A legislative act, directing the "possession and appropriation of the land, is equiva- "lent to office found. *The mode of asserting or of* "*assuming the forfeited grant is subject to the legis-* "*lative authority of the Government. It may be* "*after judicial investigation,* or by taking possession "directly under the (legislative) authority of the "Government, without these preliminary proceed- "ings.' Practically the same language was used "with reference to a grant of lands in aid of a rail- "road in *Schulenberg vs. Harriman,* 21 Wall., 44, "63; in *Farnsworth vs. Minnesota and Pacific Rail-* "*road,* 92 U. S., 49; and in *Van Wyck vs. Knevals,* "106 U. S., 360. In *St. Louis, Iron Mountain, &c.,* "*Railway Co. vs. Magee,* 115 U. S., 469, it was said "that *'legislation to be sufficient for that purpose* "*must manifest an intention by Congress to reassert* "*title and resume possession.* * * *' As there "is no pretense that any such action as is contem- "plated by these cases was ever taken, it necessarily "follows that, if an estate in fee simple vested in the "Indians, the proceedings subsequently taken would "not revest the title in the Government." (Italics ours.)

In another decision this court has declared:

> " If the grant be a public one it must be asserted
> " by judicial proceedings authorized by law, the
> " equivalent of an inquest of office at common law,
> " finding the fact of forfeiture and adjudging the
> " restoration of the estate on that ground, or there
> " must be some legislative assertion of ownership of
> " the property for breach of the condition, such as
> " an act directing the possession and appropriation
> " of the property, or that it be offered for sale or
> " settlement."
>
> *Schulenberg vs. Harriman,* 21 Wall., 63.

Now, then, those officials, the Attorney-General and the Attorney of the City of Manila, exercise their duties by virtue of sec. 45 of act No. 136, sec. 38 of act No. 183, and sec. 32 of act 496 of the Philippine Commission. They cannot contend that the desire of the American nation in this matter has been manifested in any way by means of a law or regulation; much less can they allege that the nation has given them special authorization to take any action to nullify this grant. Such being the case, it is entirely probable that Congress, in which alone is vested the power, by virtue of the third section of the fourth article of the Constitution of the United States, * * * to dispose of, and make all needful rules and regulations respecting, the territory or other property of the United States" (*Seabury vs. Fields,* 1 Wall., 1; *U. S. vs. Fitzgerald,* 15 Pat., 407), prompted by the spirit of justice that characterizes it always, instead of impugning this grant, would confirm it.

It is thus apparent that the question of carrying out the Treaty of Paris is, in the first place, a political one, and concerns Congress, and so long as that body does not ordain otherwise, this Spaniard whom we represent has the right to fully enjoy the effect of the beneficent provisions contained and agreed to, for his benefit, in that treaty, of which right nobody can be deprived under any pretext, much less under

the supposition, absolutely improbable, that Congress, which represents the sovereignty of the great American nation, will not be as just,—not to say generous—as the Spanish King was, with the grantee. (*U. S. vs. Arrendondo*, 6 Pet., 711.)

In view of the above, one can see the error made by the decision in ordering the annulment of the registration of the grant in the old Spanish Registry of Property, registration which authorizes a legal presumption that the appellant is the owner of the land. And, even if he held it on a condition subsequent, so long as the annulling power is not exercised, his title should have been considered as sound and entitled to registry according to the provisions of the Mortgage Law (Ley Hipotecaria); because it is a well-known fact that under the Law of Waters now in force grants are issued on conditions subsequent. For example: In a concession for the utilization of public waters, the sixth clause thereof provided "that in case of cancellation, or in case it should be necessary to make important and useful works in the beach, the grantee was under obligation of leaving the beach in "*statu quo ante*." The Registrar of Deeds refused to register this concession, saying that it was clearly in conflict with article 2 of the Mortgage Law, "which requires a certain perpetuity in deeds to entitle them to be registered." Undoubtedly, he must have referred the matter to higher authority, as inferred from the following: "The Bureau of the Registry considers that, according to articles 25 and 28 of the Law of Waters, this concession should be held to be definite and entitled to registry under the provisions of article 1 of the 'Rules for the Execution of the Mortgage Law.' The condition contained in the sixth clause was merely a condition subsequent to a title (already) granted * * *." (Escriche, vol. IV, p. 604, edition of Galindo y de Vera, 1876.)

Even if there existed in the grant in question a condition subsequent, which, until the Congress manifests its will in regard to the exercise of the power to annul the grant, would prevent its registration under the Torrens Act (Act No. 496),

and the issuance of the appropriate title papers prescribed by said act, nevertheless the applicant would still be owner of the land in question, and no judge or court would have the power to cancel the inscription of his title in the Registry of Deeds established by the Spanish Law, in which registry it is legally recorded.

V.

IF THE OWNERSHIP OF THE LAND WAS GRANTED ON CONDITION THAT IT BE FILLED IN, HAS THE CONDITION BEEN COMPLIED WITH IN SUCH A MANNER AS TO HAVE RENDERED THE GRANT INCONTESTABLE?

In order to answer this question it is necessary to examine the evidence:

Eduardo Vidal says: That he has known the land since 1875, and since then he has administered the property as the attorney in fact of Juan Jover y Serra, at which time the traces of the boundaries of the land were very simple because no other land was visible than that which was filled in; that he leased to different persons the part already filled in, improved and filled in part of the rest, and almost doubled the area of filled land, because that part of land on which are the buildings of Jose Lim, Smith Bell and Carman was not filled in when he took charge of the property; that he constructed a warehouse by the side of which he built a house, which exists no longer and which was occupied by one Brown; that the part of the land (house) which does not now exist was filled in with ballast that he used to buy from one Rodriguez; that on the boundary marked "B" he continued the work of filling in until 1885; that when he took possession of the land the part filled in was all the front part, to a width, at some places, of ten meters from the water, and it continued increasing, little

by little, all the way up to the bank of the Estero (creek) of Vitas; that the tenants filled it in themselves, all along the seashore; that he continued to fill it in from time to time; that at the time when he took possession of the land there was no other house but that rented to Brown; that the coal-yard was fenced with bamboo; that there was also (afterwards) a warehouse constructed of bamboo with a galvanized-iron roof occupied by Wm. McLeod; that during his administration he built a galvanized iron-roof house, adjoining the one that existed already; that he does not include among the buildings the nipa shacks that were there, on the back, all along the back line, and some of them behind the plan, and which since 1877 until 1885 paid him rents; that during the period of his administration, he had a question with the marine authorities which had a watchman there who had a house on the land; that as the land was being improved, he told them to remove the house, but they claimed that the land belonged to them and refused to remove the house; after several interviews with the Captain of the Port, and with the General of Marine it was decided that the house could remain there, and gave him a letter wherein they acknowledged that the land belonged to the petitioner and agreeing to remove the house when requested to do so; that in 1885 he turned over the administration to Mr. Barranagan; that during his administration he did not authorize any one to beach boats on the land, and that he does not think that without his authority anybody ever did so; that, before purchasing the land, he examined the portion that was filled in, but did not figure out the value thereof, he simply asked how much they wanted for the land included in the grant, and they told him 32,000 pesos, which amount he paid for the Government's grant to the Camps family, because the land was not worth more than two or three thousand pesos, but the grant was worth the 32,000 pesos he paid for it; that he took possession of the land, understanding that he was taking possession of all that was in-

cluded in the grant; that part of the land was under water, that before he bought the land, before the negotiations for the purchase were closed, he noticed that the greater part of the land *was under water at high tide, but not so at low tide;* that *when the tide was low* the filled portion became a dry land; that he secured the opinion of the authorities at that time, civil, military, as well as marine, and all of them, without exception, *told him that the grant was a perpetual grant and was perfect;* that there is no record of that opinion because he secured it verbally; that the building marked "A" on the map as that of Castle Brothers already existed (in 1877), and that the one marked "B" did not, because he thinks they constructed it; that the building marked "A" was a two-story building, and at that time the water at high tide reached its foundations; that he also found on the land some nipa shacks which were portable; that he found no buildings occupied by industries, and none has been occupied or erected for an industry; that the portion of the land filled in at that time was much smaller than the portion at present filled in; that the portion added to that already filled in, was filled in with ballast from vessels, dumped in the land from time to time; that he had an agreement with Juan Rodriguez, who was engaged in the ballast business; that the tenants living along the seashore in nipa shacks had also filled in a part of the land, besides what he filled in, and that when enough houses were built in front, others were erected behind; that many of those living alongside the land, built their houses in the swamps and at high tide the water came up under the houses; that that portion of the land never covered by water was occupied by houses, buildings, coal yards, and warehouses (R., 35-40).

Arcadio Arellano, who made the survey of the land by first describing the premises where he went several times in order to ascertain the boundaries of the land, in accordance with the instructions of the Land Registration Court, said

that: When he surveyed the land he found traces of the boundaries of the same; that at low tide it is bounded by the marshes caused by the sea, and at high tide a breakwater which can be distinctly seen on sides "DE" and "EF", over which breakwater a person can walk at low tide without getting his shoes wet, which breakwater is well settled on account of the gravitation of the stone; that this same thing he has seen on different parts of the lands; that on the side "AF" the land is bound by a stone wall belonging to the Civil Government; that on the side of the Muralión (wharf) the land is bounded by the saw mill there, and on the (line) "BE" by a stone jetty; that he made the survey at low tide and he was able to walk the whole length of the land on the side of the breakwater, so much so that he was able to place his instrument there; *that as to that portion of the land covered by the sea at high tide, he believes that it was filled in with garbage or other material*, basing his opinion on the works done on the high part of the land and the marshes shown on the map; that there was great difference in level between the foundation of the land bounded by the breakwater and the ordinary foundation of the land covered by the sea; that he can demonstrate exactly, at low tide, the traces or signs that he found, because they are so well fixed and clear, and that they could be drawn into an exact line and point, as he showed on the map; that the line drawn by him was taken from the breakwater, consisting of stones piled together on the low part of the land; that he got a fixed line out of that stone pile, following the front or seaward line; that he got the survey that appears on the plan from the land itself without following any data; that in order to obtain that survey he availed himself of the signs or traces which he found on the land; that point marked "A" is indicated by the stone wall of the adjoining land; that point marked "B" is also indicated by a stone construction called "muelle" (dock), almost on a level with the embankment, and then comes the marsh land which is outside of the limits of the polygon;

that his statement that point marked "A" is the boundary of the land in question, is based on what Señor Salvador told him, aside from the boundary considered as found in the land, which boundary was known to the witness since the time when he was employed in the Assessor's Office, for he also surveyed the land for the purpose of assessment in order to verify *the declaration made by the owner;* that on the "E" side of the map he marked a line of 138.85 meters, taking it from the breakwater included within the polygon and marked "DCE", although he only measured the side marked "DE"; that at the point marked "E" he found a sign, which is the intersection of the breakwater, where he posted the stake; that the breakwater reaches as far as a point on the line "EF" starting from the point "E"; that the intersection of the breakwater is found in the breakwater itself, and is indicated by the gravel mark on line "EF"; that he measured and marked this point as land; that *the bottom of the land is muddy, consisting of earth,* detritus of organic matter; that *the difference between the bottom of the land in question and the bottom of the sea,* is that the former's bottom is muddy and the latter's sandy; that he believes that this land cannot be mistaken for the sea; that at low tide on that part now and then covered by the sea, one could go on foot on the side of the breakwater; that *at low tide a person can walk all around the land up to about one-half* of that side, *or more than one-half,* starting from point marked "B", half way up *the line "FE", and from point "A" two-thirds up the line ending at point "F";* that on that part where one cannot go on foot does not present any signs, and only the prolongation of that part to which access could be had is what has served to fix point "F"; that the longitude of 190 meters to fix the northern boundary of the land from point "A" to point "F", was obtained by him from the intersection of two visuals taken from point "E" to point "F", and from point "A" to point "F", so that line "EF" is parallel to line "BA"; that line "AF" is the prolongation of the wall; that

the landing place (muelle) is marked "BCDE", the breakwater commencing at point "E"; that in order to prevent the polygon from going outside or beyond the breakwater, he did not consider line "DE" as a prolongation of lines "C" and "E", and did prolong the wall from point "A" to point "F"; that he believes that the breakwater, through which line "DE" and part of line "EF", has been there for more than fifteen years, on account of the way it protrudes from the land (because it is sufficiently visible in the land) and because it is sufficiently settled in the land; that both the low tide and the medium tide lines are marked in the map; that the low tide mark is that of Manila Bay, and the medium tide line is that indicated by the breakwater (along "EF"), and the high tide line is the breakwater ("DE") shown on the first place on the map (R., 40-46).

Felix Fanlo says: That he leases a part of the land, occupying that part between the lighthouse and the low tide mark, and that part behind the coal yard down to the boundary of the land; that for about six years he has been a tenant of this land from the bank of the estero (creek); that he rents all that portion that is inundated by the tide; that on the part that he leases, the firm of Rocha and Company, of which he is a member, had a house and some warehouses; that the part leased by the firm, was previously occupied by Santiago Dominguez and afterwards by Carman; that with the permission of the firm, and only in some exceptional cases, boats and other craft occasionally go upon that part occupied by the firm and beach thereon; that he used to charge them for the use of the land, having done so from the beginning until the present date; that he knew that the firms who preceded his in the occupation of the land, did the same thing, as he had been a member of all those three firms, of which he was the manager, and this was a matter (that of collecting fees from the boats entering and beaching the land) particularly under his control; that his firm had

had some houses and buildings on the land, which were burned with all the goods stored in them, in a fire which occurred on a Good Friday; that at the time of the equinox the water covers the land and the sea comes right up to the landing place; that he had notified the owners of the boats that entered and beached on the land that he was the tenant of the land, and had collected fees from them; whereupon their boats were permitted to come on the premises and be repaired under contract; that the land now filled in is used as a coal yard; that there are also buildings occupied by Castle Brothers, and then there is another coal yard; that the land rented by him and indicated on the map with the name of Carmen and Company adjoins the sea; that he cannot say with precision how many meters are included in the land that he occupies, but that he thinks that it is about four hundred square yards from the landing; that in front, on the side of the landing, the land that he occupies is about twelve or fourteen meters, and that its depth is all that the sea allows, that is to say, they use all that the sea permits, because when at low tide small craft remained beached on the land, and there is no limit except as far as the sea permits; that it is not possible to walk on the land between the point where the sea reaches and the near-by landing; that one can walk around probably for about forty or fifty meters, but beyond that there are places where one would get stuck up to his knees, because the tide brings too much sediment to the shore and the land around there is very soft; that of the buildings indicated on the map, his are a warehouse with galvanized iron roof and a small frame house; that on the point marked 30.80 on the plan they have two buildings—the small frame house and small warehouse some six or seven yards long by two and one-half wide, the small house being about four yards square, and that all the rest are coal yards; that the sea only reaches the buildings and the coal yards during the equinox, *because the land has been raised con-*

siderably; that at high tide the sea reaches within 18 or 20 feet of the buildings (R., 46-48).

Joaquin Salvador, the present attorney in fact for the owner of the land, says that he has been in charge of them for some eight years; that buildings "A" and "B" occupied by Castle Brothers pay rent for all of the land covered by them, including the portion that they have filled in at their expense; that the adjoining building, occupied by a Chinaman, also pays rent; that the other buildings marked on the plan have been put up by the owners of coal yards for the use of watchmen they have there, the same as Carman's, all very small, but paying rent for the land they occupy; that when he took possession of the land he knew what its area was from the documents and deeds which passed through his hands; that when Vidal ceased to be the agent, the land was turned over to Barranagan and by the latter to Soler; the owner of the land was always advised to proceed with the filling in of the land, beginning at the breakwater, which was done in several years because the owner was not in a position to invest a large amount of money on the work at one time; that then there was discussion on this subject, and, finally, some two years ago Carlos Las Heras was employed to do certain work; that it was always the idea of the owner to complete the filling in, and when the land was occupied by nipa shacks *it was decided to require the tenants to fill it in gradually, because, paying an assessed tax of $1.00 gold per square meter,* the rents collected were not even sufficient to cover the interest on the money, and that is the reason why it was desired to fill in the land in order to get something out of it; that during his administration *the land was acknowledged to be private property,* because at the time of the American occupation he ousted the people who lived there in the warehouse in order to lease the same to other parties, and he had no trouble at all in so doing; that he applied to the Municipal Board for permission to fill in a part of the land, because the engineer who drew the map told him that

he should secure that permit from the said Board, it being a work like many others; that he recognizes a letter, that was shown him, wherein he applied for such permission, which permission was denied; that he was in possession of the land shown on the map, and that he understood that he exercised that possession since no boats whatever were allowed to beach on that part of the land covered by water without paying therefor, either to Mr. Carman or to the firm of Soler; if any boat was ever beached on that part of the land referred to the owner of the boat had to pay a certain amount; that all the nipa shacks on the land also paid rent; that he never walked around that part of the land covered by water except when the last map was made, when he walked around there and stopped at point "E," where the apparatus was placed; that at high tide he had been there in a banca in order to have a better idea of the work that he desired to see; that at low tide the boats that paid for anchoring in the land cannot come within the limits of the land as indicated in the map; that at high tide they may advance more or less, as, for instance, cascoes can enter as far as behind Mr. Carman's house, which indicates the place to where the marshes extend; that the black spots on the map behind the house of Carman and Company indicate dry land; that between those points and the Malecon or embankment, the land is within, although at high tide the rest is covered by the sea; that the same thing happens at other places where the sea jumps over the Malecon or embankment; that most of the land that he calls dry is occupied by coal yards, except the space occupied by the warehouse of Castle Brothers, which are used for the storage of merchandise imported by them; that the space behind that part occupied by Castle Brothers was filled in only a short time ago by Mr. Castle himself, and that they paid him rent for that space from the moment it was filled in, which they did to enlarge their business by building sheds behind "AB" at their own expense, which sheds are used for their houses and wagons; that the addition was made be-

cause they needed more land to enlarge their business; that the buildings shown on the map as belonging to Castle Brothers are marked "A" and "B"; that these houses are both frame buildings and that, although they appear to be two-story high, they are only warehouses of one single floor; that they are simply warehouses, one higher than the other; that there are no other buildings devoted to other purposes, nor any artistic establishment, nor any rope-rigging manufactory, nor a blacksmith shop or foundry, and that the whole land, like any other property, is used only for the purpose of producing rent for the owner; that at low tide he has always seen the breakwater, and according to his calculations the breakwater has been there for about thirty years (R., 48-52).

Damaso Flores, formerly collector for Mr. Vidal, since June, 1881, and at present for the applicant's attorney in fact, testified that he has collected rents from Smith, Bell & Company, Warner, Barnes and Company, etc., and that at present he collects from the Compania Maritima, Smith, Bell & Co., Francisco Reyes, Carman & Co., Aguado, and the Chinaman Otieng-Sing, all of whom pay the rents promptly (R., 52-53).

Enrique Rodriguez, who has been a resident of the Philippines for thirty-five years, said that he had known during that time a man by the name of Camps as the owner of a certain tract of land on the Malecon, near the lighthouse, and *to whom he used to sell ballast to fill in the land;* that he knows that land, which at present belongs to a man who lives in Barcelona, whose name he does not remember; *that when he knew Camps a great part of the land had been filled in*, some parts being unfilled in; *that when Camps died he was succeeded by his son who continued to fill in the land;* that some time afterwards he met the gentleman who lives in Barcelona and had business deals with him; that he also knew Mr. Vidal to whom he used to sell ballast to fill in the land;

that he furnished ballast to Camps for a long time, the exact duration of which he cannot say; that many years ago he knew Vidal as the agent of the owner or as the owner; that during Mr. Vidal's time he continued to furnish the ballast which was carried to the land in boats or cascoes that used to anchor in front of the dock at the mouth of the river, and men would take the ballast in baskets and dump it on the land under his directions; *that at that time the boundaries of the land could be ascertained, because before Mr. Vidal's time a line of stones piled up one upon the other was built for the purpose of making the said boundaries, which stone wall must be still visible at the outside limit of the land* which Camps claimed to be his and which was to have been filled in up to that limit; that afterwards they ceased buying ballast from him and he does not know if they bought it from any one else; that he thinks that he furnished the ballast until some four or five years prior to the occupation of Manila by the Americans; that the ballast came from vessels ariving from abroad; he took charge of the unloading of those ships and then contracted with the agents for the sale of the ballast to be deposited in the land; after closing the contract the ballast would be unloaded from the vessels and dumped into the land; that he actually saw the ballast dumped into the land, because he used to go to the land, from time to time, to see if his men were working or not; that he saw where the first ballast sold by him was placed, at a very short distance from the Malecon, on a level with, and at the other side of, the dock, indiscriminately; that when the first ballast was deposited there was no dock there as that which exists today; that the dock at that time was built of Guadalupe stone and the ballast was used to raise the land to the level of the dock and make it all even; that a large amount of the ballast used was furnished by him; *that a line of stones piled one on top of the other was first laid to mark the boundary,* and then the land was filled in with ballast; that the land now occupied by buildings was

filled with the ballast furnished by him only; *that others furnished the ballast before he did;* that the time when he sold his first ballast was at least ten years prior to the American occupation of Manila, and perhaps more, because a large portion of the land has been filled in and very little now remains to be filled; that before he deposited his first ballast on that land he was shown the place where he was to put the same; that he remembers, more or less, that the said place commenced at a sort of rivulet running under the bridge called "Puente Hiede" and ended at a place near where the small house built by the Department of Harbor Improvements is; that the first ballast he sold was deposited on that part of the land which is somewhat rocky, and that there were some limestones there brought by the boats when he commenced to fill in the land, and that his first ballast was deposited on top of another layer of stones and débris; that part of the ballast was deposited in the middle of the land, because after laying the straight line—the boundary line—the space was gradually filled in towards the center; that his ballast consisted of sand and limestone; and in quantities of seven or eight hundred tons each time; that he has also sold ballast to other people; that the first ballast was sold to Mr. Camps, Jr., and to Mr. Vidal; that the ballast sold to Mr. Camps, Sr., was sold by the witness' father-in-law; that at the time when he deposited the first ballast sold, the strip of land along the Malecon or embankment, according to his estimate, was about two hundred odd meters long by one hundred odd meters wide; that notwithstanding the amount of filling in done and the Malecon or embankment, the land is always covered by the sea at high tide, just as are also the coal yards as far as the southern Malecon or embankment, for which reason there are holes in the ground when the coal is removed (R., 54-58).

S. O. Scudder, surveyor for the Court of Land Registration, verified the map, for which purpose he measured the

line "BA" and found that it was practically correct, the second line that he measured was from point "M" on line "AB" to point "N"; point "N" he found to be the point to which the water reached at high tide generally; he was unable to measure the distance from "A" to point "P" because it was muddy and swampy and could not get there; that there is a stone wall along this line but could not get there because it was muddy; that he found the map correct, and saw stones scattered within six meters alongside "DE"; he was unable to fix line "FE" because it was indefinite; the stones were not joined but scattered in an irregular manner; he noticed a post at a point which he took to be point "E" somewhat inclined to one side; that line "PNKL" is approximately the high tide water line and it is marked almost in its full length by scattered stones; that from point "L" to point "U" there is distinctly marked a low stone wall which looks like a wharf about half a meter above the ordinary level of the land; that on this side of the wharf the land is filled up to the top of the wall but not so on the sea side; that the area between the points "A," "B," "C," "D," "L," "K," "P" he considers as land, that is to say, one-third or one-fourth of the whole; that the rest of the land is subject to the tide of the sea, that is to say, that at high tide it is covered by the sea, and *at low tide it is almost uncovered and it is a marshy land;* that he saw signs of occupation by man, because there were some small fishing boats beached on a swampy land and some logs of wood along the sea shore; that he did not see fishing boats, but small *bancas* sailing over the land at medium low tide; that at low tide a person can walk on that portion of the land with difficulty, getting stuck in the mud; that he did not verify line "EF" because he did not reach it (R., 61-63).

This is all the evidence regarding the matter now under consideration that appears in the record.

From the above evidence, we submit as proven the following

Facts.

1. That immediately after the grant was issued, Don José Camps began to fill in the land and continued filling it in during his lifetime.

2. That after the death of Don José Camps, the work of filling in was continued by his son Don José Camps, Jr. and later by Don Eduardo Vidal, from 1877 to 1888, inclusive, as the representative of Don Juan Jover y Serra, who succeeded the Camps family in the ownership of the land.

3. That after the period of Vidal's administration, the filling in of the land was continued up to this date, in spite of the fact that, recently, the Municipal Board of Manila had refused to issue the requested permit for the carrying out of the work of filling in contracted for.

4. That during all the time, besides the filling done by the owners, the tenants have from time to time and gradually, filled in the land, as they still do at present, with large quantities of material.

5. That approximately one-third of the whole land granted is completely dry.

6. That almost all, if not all, the land has been filled in, because in no portion thereof remains any sandy bottom like that of the sea, and all that part of the land covered by water at high tide is muddy.

7. That the boundary of this land on that part that is still covered by water sometimes, is marked with a line of stone, and all the land is easily distinguishable from the sea.

8. That the owners have had the peaceful and exclusive possession of the land, usufructing it, building on it, and

letting the buildings, from the date of the grant until the present time without any interruption whatsoever.

9. That the authorities of the former Spanish Government had always admitted that the grant was a perfect and perpetual one, and that there was no condition unfulfilled.

Before discussing the juridical effect of the facts established by the evidence, it will be opportune to examine the terms of the grant by the light of the jurisprudence established in similar cases, in order to ascertain if, as the lower court held, the ownership should have been extended to the land as the filling in thereof advanced; or whether it was a grant, *in præsenti*, for the possession and ownership subject to forfeiture, should they be forfeitable, on account of the non-completion of the filling in.

In *New York Indians vs. U. S.*, 170 U. S. 17, it is said:

> "In the cases arising under the railroad land
> " grants, of which *Schulenberg vs. Harriman*, 21
> " Wall., 44, is a leading one, *the language of the*
> " *granting clauses was in the present tense, 'there be,*
> "*and hereby is, granted,*' etc.; and it has always
> " been held that these were grants *in præsenti*, al-
> " though the lands could not be identified until the
> " map of the definite location of the road was filed,
> " when the title, which was previously imperfect, ac-
> " quired precision and became attached to the land.
> " *The doctrine of this case has been affirmed so many*
> " *times that the question is no longer open to*
> " *argument here. Lessee vs. Price*, 12 How., 59;
> " *Leavenworth &c., R. R. Co. vs. U. S.*, 92 U. S., 733;
> " *Missouri, Kansas and Texas R. R. Co. vs. Kansas*
> " *Pacific R. R. Co.*, 97 U. S., 491; *Denver & R. G.*
> " *R. R. Co. vs. Alling*, 99 U. S., 463, 475; *St. Paul*
> " *and Pacific R. R. Co. vs. Northern Pacific R. R.*, 139
> " U. S., 1; *Deseret Salt Co. vs. Tarpey*, 142 U. S., 241.
>
> "The same doctrine has been applied to grants for
> " swampy and flooded lands, by the acts of Septem-
> " ber 28, 1850, and June 10, 1852. *Hannibal and St.*
> " *J. R. R. Co. vs. Smith*, 9 Wall., 95; *Wright vs.*
> " *Roseberry*, 121 U. S., 488."

On the same page and immediately before the paragraph just quoted, the court, making reference to the case of *Fremont vs. U. S.*, said:

> "*Fremont vs. United States*, 17 How., 542, was a "case of a Mexican grant of a tract of land known as "'Las Mariposas,' within certain undefined boundaries. The grant was of ten square leagues, subject "to certain conditions, and was to be made definite "by a future survey. *The grant purported to convey "a present and immediate interest*, in consideration "of previous public services, and it was decided to be "*in præsenti* upon the authority of *Rutherford vs. "Greene*, 2 Wheat., 196, that the conditions were "conditions subsequent, but that non-compliance "with them did not amount to a forfeiture of the "grant."

It should be borne in mind that the grant in question has more force to convey the *immediate title*, even if it were a conditional grant, than the grants dealt with in the decisions that have been quoted; for several reasons, such as that there was nothing more to be done afterwards to define the boundaries by means of a survey, and that there was nothing to be done by the Government to render the ownership complete.

From that standpoint, let us examine the words of the grant:

> "Don José Camps * * * is granted *the possession* and *ownership of a parcel of land 200 brazas "in length and 100 brazas in width covered at present "by the waters of the sea*, near the Binondo beach, "which land is situated alongside the North Bank "Wharf, *and the requested permission to fill in the "same at his expense* is also hereby granted; subject "to the following conditions and limitations."

So far, *the possession and ownership of the indicated parcel of land* are conveyed to Camps. The words are: "*is granted*," in this very moment, "*the possession and ownership*," not of the land that he may fill in, but, "*of a parcel of land two*

hundred brazas in length and one hundred brazas in width" in the place indicated. Those words could have had one effect only, which is *the instantaneous conveyance* of the possession and ownership of the indicated parcel of land. And that *possession and ownership* having *been* absolutely conveyed to Camps, cannot be taken away from him unless it be done by something that should take place afterwards. It is not as the court *a quo* held, that the possession and ownership are suspended so that they could gradually be conveyed to Camps as the work of filling in advanced; on the contrary, the possession and ownership were conveyed to him *eo instante*, and if taken away from him it would certainly have to be by means of something that took place afterwards. This is inevitable; and inasmuch as up to this point in the grant no sort of sophistry can impose by inference, any condition subsequent on *this perfect and absolute conveyance of the possession and ownership*, let us examine the rest of the substantive part of the decree making the grant:

The following is the only thing that could suggest, even remotely, such a condition:

> "1st. The land to be filled in shall form a quad-
> " rangle two hundred brazas long and one hundred
> " brazas wide; beginning on the longer side, nearest
> " to the Pasig River, at a point twenty-five varas from
> " the bridge connecting the waters of the river and
> " of the bay and running parallel with the wharf to-
> " ward the lighthouse."

Our opponents contend that a forfeiture has resulted from the failure to completely fill in *all the land*, the possession and ownership of which were conveyed to Camps by the grant. No time was fixed, within which the filling was to have been completed. It does not appear from all the circumstances in the case, that the granting Governor desired the filling in to be completed immediately. On the contrary, it would seem he expected it to be done little by little at the convenience of the grantee. It does not appear that the Gov-

ernor ever required that the whole land be filled in at any time. It therefore seems to us that the non-compliance with the alleged condition could only be proven by proof that all intention to fill in the land has been definitely abandoned. In order to apply a different criterion to this point, it would be necessary to find express stipulations, either in the grant itself or in some law, showing beyond a doubt that such was the intention of the grantor. This is inferred from the rule laid down by the Supreme Court of the United States in its decision in *New York Indians vs. U. S.*, 170 U. S., 25:

> "A condition, when relied upon to work a forfeit-
> " ure, is construed with great strictness. The grantor
> " must stand on his legal rights, and any ambiguity
> " in his deed or defect in the evidence offered to show
> " a breach will be taken most strongly against him
> " and in favor of the grantee.
> "A condition will not be extended beyond its ex-
> " press terms by construction.
> "The grantor must bring himself within these
> " terms to entitle him to a forfeiture."

In the above case the grant of the Government of the United States read as follows:

> "That such of the tribes of the New York Indians
> " as do not accept (the grant) and agree to remove to
> " the country set apart for their new homes within
> " five years * * * shall forfeit all interest in the
> " lands so set apart to the United States."

And the court said:

> "It will be observed that the forfeiture is condi-
> " tioned, not upon the actual removal of the Indians
> " to the Kansas reservation, but upon their accepting
> " and agreeing to removal within five years, etc."

Therefore, the Indians, notwithstanding the fact that they did not move to the reservation within the time fixed, did not

break the condition, and the Government did not secure the forfeiture it sought.

That decision is a recent one, and we suppose that there will be no objection to its application to the pretension interposed by the Attorney-General on behalf of the Insular Government, in this matter, since that doctrine was applied to the Government of the United States by its own Supreme Court, in the case above quoted, and since it has a direct bearing on the supposed condition in question; because, applying the same rule to our grant, wherein it was not provided that it should be necessary *to completely fill in the whole area of the land in question*, under penalty of forfeiture of the title conveyed, it is not possible that the failure to do so should work a forfeiture.

Sanchez Roman (Vol. IV, page 847), says:

> "Stipulations *commissoria lex* (pacto comisorio) "contained in a contract providing for a forfeiture. "when their meaning is doubtful, should be given a "strict interpretation against the person for whose "benefit they were inserted."

In a case in which an insurance policy provided that if the policy-holder sold or transferred the property insured, the said policy should become null and void, the court said:

> "It was competent for the policy to provide, ex- "pressly, that a sale of a part of the property or of an "interest therein should avoid the policy. This they "did not do. The absence of a specific provision to "that effect, when it could have been so easily in- "serted, together with the rule before referred to that "conditions which defeat a policy should be con- "strued strictly against the forfeiture leads us to "hold that a sale of the entire interest of the party in- "sured was necessary to avoid the policy."
>
> *Blakwell vs. Miami Valley Insurance Co.*, 14 L. R. A., 431, Supreme Court of Ohio

In the case of *Cowen vs. Iowa State Insurance Co.*, 40, 552, the insurance policy provided that: "When any property insured in this company shall be alienated by sale or otherwise, the policy thereon shall be void," and the Supreme Court of that State said:

> "Nothing less than a transfer of the property in-
> " sured whereby the plaintiff would part with all his
> " interest therein, would operate to defeat the policy
> " under the condition." * * *

In that same case, the policy-holder had transferred an interest in his merchandise to another partner, entering into partnership with him, and the court said:

> "Under the rule that applies to the interpretation
> " of stipulations *commissoria lex*, the right acquired
> " by the policy is not lost on account of the transfer,
> " because it was not expressly included in the terms
> " of the stipulation."

In another citation it is said:

"A condition cannot be extended beyond its terms, and a party who insists upon a forfeiture of an estate for a breach of condition must bring himself clearly within the terms of the condition," because, having the *onus probandi*, he must clearly prove the forfeiture (Devlin on Deeds, 973; Voris *vs.* Renshaw, 49 Ill., 425). In this latter case, the condition was against the alienation (of an estate), except by a lease for a term of years, prior to a certain date; the grantee executed a lease for ninety-nine years, and signed an agreement binding himself to cede the land upon receiving its value; the decision was that, the contract to alienate not being an alienation, and the lease being for a number of years, even though the term was a long one, that the condition had not been violated.

The application of these decisions to the supposed condition in question, is evident; because since it was not stipulated in the grant that the failure to fill in the land in its en-

tirety would produce the forfeiture of the property, it ought to be clear that, when approximately one-third of the land has been completely filled in, and almost, if not all, the land was brought within the scope of operations of the work of filling in, it is not possible to secure such forfeiture for a breach of the alleged condition, specially when it is taken into consideration that no time had been set for the completion of the reclamation work.

The rules of interpretation are applicable both in the Spanish and the American law, as we have already seen in the quotation from the famous author Sanchez Roman and from the Spanish jurisprudence. For example, in the decision of the Supreme Tribunal of Spain of February 4, 1902, the rule was established that provisions of a penal character should be interpreted strictly; and in the royal decree-decision of February 4, 1888, 1 Aloubilla, 323, in regard to a case of utilization of waters, the following was declared:

> "It is hereby established that, although in accord-
> " ance with article 203 of the law of August 3, 1866, a
> " grant is revocable when the time therein set for the
> " completion of the works has expired and no exten-
> " sion of time for just cause has been applied for, it is
> " necessary that such circumstance be proven beyond
> " a doubt, because the condition in question, being of
> " a penal character should be construed strictly."

It should be borne in mind that the above royal decree-decision, deals with a grant for the utilization of public waters under the law of waters, in which case not only had conditions been expressly stipulated in the grant, but also the law itself imposed those conditions upon the grant. It follows that that royal decree-decision is an express authority in support of the interpretation that we are applying to the supposed condition in question; because it follows from the doctrine expressed therein that it would be impossible to secure the cancellation of Camps' grant for non-compliance with the alleged condition.

There ought not to be any doubt as to the fact that, in order to defeat a right of ownership, under pretext of breach of a condition, it is necessary to find that it was expressly agreed to that non-compliance with the condition, in the manner stipulated, shall cause the forfeiture of the property.

This is corroborated by the following decision of the Spanish Supreme Tribunal:

Rescission of a contract. Can it be produced by causes that were not stipulated? Don Juan de Llano agreed to sell Don Pedro Prieto, executing the respective public instrument (escritura publica), within the term of four months, at the expiration of which the vendee entered suit against the vendor for the recovery of the price of the property object of the contract. The lower court declared the contract rescinded, and the Supreme Tribunal overruled and annulled the judgment of the former, saying:

> "Whereas, in the contract no cause for rescission
> " was established, that is to say, it was not stipulated
> " therein that, in case the deed of sale and delivery of
> " *all the property* was not executed *within the term*
> " *fixed*, the contract should become void, therefore,
> " the decision appealed from, by declaring the con-
> " tract rescinded, as to the part not complied with,
> " has violated the same, attaching thereto a reach
> " which it has not." (Decision of January 26, 1881.)

To confirm the above, let us cite the doctrine sanctioned by article 1294 of the Civil Code, although that Code was not in force on the date of the grant, nevertheless, its doctrine is applicable to the matter at issue. That article is as follows:

> "Art. 1294. The action for rescission is a subsidiary
> " one and can be enforced only when the injured
> " party has no other legal remedy to obtain the repa-
> " ration for the injury."

In *Crane vs. Inhabitants of Hyde Park*, 135 Mass., 147, a parcel of land was conveyed to a school district in 1804 by means of deed containing the following provisions:

"The said land is to be held by said district for the " purpose of building a school-house thereon, and to be " improved for the benefit of schools, and for no other " use; and when said district shall cease to improve " the said land for the purposes aforesaid, for two " years in succession, then the said land shall revert " back to the grantor. The district soon afterwards " built a school-house on the land; and, upon the abo- " lition of the school district in the town, the title of " said district passed to the town. A school was kept " in the school-house by the district and the town from " the time the school-house was built until 1872. " After that, no school was kept there, the scholars " having been transferred to another school-house " where they could be graded. The land and school- " house were not taxed as against any one, but were " always treated by the town and school committee as " a part of the school property of the town. In " 1881, under a vote of the school committee, a new " fence was built around the land; the school-house " and fence have since remained, and the land has " never been used for any other purpose. Held, on " a writ of entry, brought in 1881, by the grantor " against the town, that there was no breach of the " condition of the deed, or forfeiture of the estate."

In the decision in this case the Supreme Court of Massachusetts said:

"Assuming that this deed conveyed an estate de- " feasible upon a condition subsequent, the question " is, whether the defendants have shown that the ten- " ant has forfeited its estate by a breach of the con- " ditions of the deed. * * * The condition of " the deed is, that, if the grantor shall cease, for two " years in succession, to improve the land for the " purposes named therein, the estate shall be for- " feited. The purposes named are, that the land " shall 'be held by said district for the purpose of " 'building a school-house thereon, and to be improved " 'for the benefit of the schools and no other use.'

"The facts show that the grantee built a school- " house on the land, and that it and its successors in " title have maintained it to the present time. The " tenant *has not abandoned the use of the land* for

"school purposes, or appropriated it to any other use; "on the contrary, it has always treated it as a part of "the school property of the town, and, it is fair to as- "sume, has had, in good faith, the purpose of keep- "ing a school on the land whenever the exigencies "of the town should require it. The most that is "shown in favor of the demandants is that the town "has not kept a school in the school-house for more "than two years in succession before the date of the "writ. But the condition of the deed is not that the "estate shall be forfeited if the tenant ceases to keep "a school on the land for two years in succession. "The demandants' claim is *strictissimi juris*. It is "well settled that such a condition, when relied upon "to work a forfeiture is to be construed with great "strictness. Merrifield *vs.* Cobleigh, 4 Cush., 178; "Hadley *vs.* Hadley Manuf. Co., 4 Gray, 140.

"We can see in the deed before us the intention of "the parties that the land should be set apart and ap- "propriated for school purposes, and for no other use; "but it does not plainly declare that, if the grantee "shall fail to keep a school on the land for two years, "it shall work a forfeiture. If the grantor intended "that this failure should work a forfeiture, *he should "have so stated in clear language, so that the grantee "would understand it*. Having used language which "is susceptible of two constructions, that construction "ought to be adopted which is most strongly against "him, and we cannot by implication, and by the in- "ference of an intention not clearly expressed, en- "large the meaning of the condition."

No comments are necessary to prove the application of the doctrine stated to the alleged non-compliance with the supposed condition here in question.

We could continue quoting authorities on the subject, piling quotation upon quotation, but, to what purpose? No one can doubt that the person who would enforce a forfeiture must do so *in strict conformity with the terms of the contract*, because in the courts is vested the discretionary power of modifying the penalty in favor of the party bound by the obligation when the same has been partly or irregularly complied with by him (Art. 1154 of the Civil Code), to the ex-

tent of mitigating the effect of his negligence (Art. 1103 of the same Code); but the courts could never adjudicate to the claimant anything by reason of penalty or breach of condition, *outside of what has been expressly stipulated.*

If there be a condition, it seems to us that in default of any time having been fixed for complete fulfillment thereof, and on account of the impossibility of ascertaining whether the grantee understood that any such condition as is now alleged inhered in the grant, as well as by reason of the fact that up to this date no time has been set within which he may fufill that condition, it is only fair to recognize that the alleged condition, if such there ever was, has not been violated, especially so long as it is not proven that the grantee has abandoned all intention of completing the work of filling in. And yet, we think that it should be held that not only has the condition not been violated, but that on the contrary it has been complied with by the filling in already executed.

Surely, a just government cannot have any claim of ownership against land upon which not only the grantee, but also those that have succeeded him in his rights, have invested so much money and work. It is needless to say that never has there been any intention to abandon the work of filling in and draining the land. All things considered, we think we have proven that, if there be a condition attached to this grant, the said condition has been complied with, in such a manner that it cannot be affirmed that the property has been forfeited.

We submit the judgment below should be so modified as to direct that the prayer of the petition be granted and petitioner's title registered as fully as therein prayed.

Respectfully submitted,

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Appellant and Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

JOAQUIN JOVER Y COSTAS, APPELLANT and plaintiff in error, *v.* THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS and the City of Manila.	No. 112.
THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS and the City of Manila, appellants and plaintiffs in error, *v.* JOAQUIN JOVER Y COSTAS.	No. 113.

APPEALS FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF ON BEHALF OF THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS AND THE CITY OF MANILA.

STATEMENT OF THE CASE.

This is an action brought by plaintiffs under act No. 496, Public Laws, Philippine Commission, vol. II, pp. 85–118, in the court of land registration of the Philippine Islands to have recorded their title to a tract of land which is particularly described therein.

Plaintiffs claim title through a grant which purports to have been executed by one Norzagaray in favor of Don Jose Camps on the 12th day of February, 1859. Said grant in full reads as follows:

> Acting upon the petition in which Don Jose Camps on November 17, 1858, solicited a grant for the land which he fills in at his expense on the lowlands situated along the northern wharf (Murallon del Norte) and on the north side thereof, on the right side of the mouth of the Pasig River, with an extension of 200 brazas in length and 100 brazas in width, beginning at a distance of 25 varas (Spanish yards) west of the bridge built on said wharf for the connection of the waters of the river and of the bay from the beach of Binondo, as appears on the plan hereto attached, to which land, after it has been filled in, he intends to move his artistic establishment called "Camps é Hijos" and a manufactory of hemp rope; in view of the report made on the 26th of the said month of November by the alcalde mayor 1.° of Manila, who, after consultation with the director of public works of the Province, is of the opinion that the waste land asked for should be granted to Camps, said land being at present covered by the sea, and being far from the houses situated on the Binondo beach, it is very suitable for purposes of maritime commerce and it is convenient for the purpose of public adornment, that the foundry, iron-working, and scientific instrument establishment of Camps é Hijos be located on that place, provided that the said Camps shall

agree not to erect such buildings with brick and stone or strong materials for the reason that the same is outside of the military lines; in view of the report made on December 17, 1858, by the commanding general of marine, in agreement with the captain of the port regarding the convenience of such concession for the merchant marine and public adornment, but with the precise condition that Camps shall leave a distance of 16½ varas between the outside edge of the wharf and the intended building, which width is the one fixed for wharves; in view also of the report of the subinspector of engineers, with the approval of the commander of the post, proposing that the concession asked for shall not be granted for a building of strong materials, on account of the forts of the place, and that the building to be erected shall consist of only one story, and shall be removed at the expense of its owner, at the discretion of the superior authority of the islands, when the public interests so require, taking into consideration the circumstances and official and industrial merits of the said Don Jose Camps, and the offer of protection stated in the decree dated November 4, 1858, when refusing the sale asked for by him of an irregular piece of land adjoining the new Cuartel del Carenero, and in conformity with the above-mentioned reports of the commanding general of marine, the subinspector of engineers, and the civil chief of the Province of Manila, I hereby decree:

Don Jose Camps, *comisario de guerra honorario, oficial mayor jubilado* of the office of the

secretary of his superior government, and director of the ironworking and nautical instrument establishment of Camps é Hijos, is granted the possession and ownership of a parcel of land 200 brazas in length and 100 brazas in width, covered at present by the waters of the sea, near the Binondo Beach, which land is situated alongside the Murallon del Norte, and requested authority to fill in the same at his expense is also hereby granted, subject to the following conditions and restrictions:

First. The land to be filled in shall form a quadrangle 200 brazas long and 100 brazas wide, beginning on the longer side nearest to the Pasig River, at a point 25 varas from the bridge connecting the waters of the river and of the bay and running parallel with the wharf toward the lighthouse.

Second. The buildings to be erected by Camps on this new land so granted shall be located along the said longer side parallel to the breakwater, separated from the edge of the exterior wharf for its whole length, a distance of 16½ varas, which is the width required for wharves.

Third. The said buildings shall consist of only one story, no materials of the kind prohibited in the military zone shall be employed therein, and shall be roofed with zinc, tarred paper, nipa, or other similar materials.

Fourth. The said buildings shall be removed at the expense of Don Jose Camps or his successors whenever, at the discretion of the superior military authority of the islands,

> the military service so requires. Let the interested party be notified and a certified copy be issued to him.
>
> NORZAGARAY.

Registration was resisted by the Government of the Philippine Islands, and also by the city of Manila, on the ground that the land was a part of the public domain. (Rec., pp. 33, 34.)

After evidence had been heard, the court of land registration held that the said instrument conveyed title to only such lands as had been actually filled in; and further held that only that portion which is embraced within the points marked A, B, C, D, U, L, K, N, and P on the plat had been filled in; and therefore ordered registration as to the portion designated, but refused registration as to the remaining part. (Rec., pp. 67–70.)

From this judgment both parties prosecuted an appeal to the Supreme Court of the Philippine Islands. The decree of the lower court was there affirmed by Justices Carson, Torres, Mapa, and Willard. Chief Justice Arellano did not vote, while Justice Johnson dissented, expressing the view that the grant was valid and conveyed an unconditional title to the entire tract described, and that the court should have ordered title to the whole to be registered; and Justice Tracey dissented upon the ground that the Governor General of the Philippine Islands had no authority to convey the lands in question, and that the title was a nullity as to the entire tract, and that title to no part of the same should be registered. (Rec., pp. 73–99.)

I.

The finding of facts by the court of land registration and the Supreme Court of the Philippine Islands as to the amount of land filled in is conclusive upon this court; and, furthermore, such finding is amply sustained by the evidence.

The court of land registration expressly found that the part designated by the lines A, B, C, D, U, L, K, N, and P is reclaimed, and that the other portion has not been reclaimed. (Rec., p. 70.) While the majority of the court filed no opinion, yet a general affirmance was a concurrence in this finding of fact. Therefore if the case is here by writ of error, the question as to how much of the tract in question has been actually filled in can not be reviewed by this court.

Behn v. *Campbell*, 205 U. S., 403.

Santos v. *Roman Catholic Church*, 212 U. S., 463.

If the case is here by appeal, there being a concurrence in the finding of facts by the court of land registration and the Supreme Court of the Philippine Islands, this court will not review the facts.

Strong v. *Repide*, 213 U. S., 419, 429.

Moreover, the evidence shows conclusively that the court was correct in its finding.

The proof with reference to the reclamation shows that there were some stones placed in an irregular way along the lines D–E and a short distance along

the line E–F, as indicated on the plat. These stones were entirely covered during high tide, and that portion, as to which the court below refused registration, is entirely incapable of use on account of the flow of the sea, just as much so as any other body of land which is subject to overflow by the tides.

It appears, however, from the evidence that nearly all of it is uncovered at low tide, but it can not be even walked over in consequence of the condition of the soil.

II.

The instrument dated February 12, 1859, upon which plaintiffs rely as the basis of their title, was void, because executed without authority.

To sustain the validity of this conveyance, reliance was had by Justice Johnson upon the preamble to title first of partida 2, and laws fifth and eighth of said title, to demonstrate that the Kings of Spain had complete authority; and then upon laws second and third, title 3, book 3, of the Laws of the Indies, which refer solely to the viceroys of Peru and New Spain, and provide that they have the same authority as the King in the provinces under their charge in all matters that were not prohibited; and also upon the fifth of said title which provides that said viceroys shall "make rewards, favors, and pardons which they may deem to be convenient"; and taking for granted that the Governor General of these islands had the same authority which those vice-

roys had, it is concluded that he had the same authority as the King of Spain.

This conclusion is erroneous, because:

First. *The laws of the Indies relied upon were applicable only to the viceroys of Peru and New Spain, and not to the Governors General of the Philippine Islands.*

The kingdoms and seignories of the Indies discovered by Spain were divided into two viceroyalties, that of Peru and that of New Spain. (Laws I, Title III of Book III, and I, Title II, Book V, Laws of the Indies.) Each of these viceroyalties was subdivided into major provinces or districts, and there was created in each province or district a royal audiencia and chancelry. The viceroyalty of Peru comprised the following districts: The district of the royal audiencia of Panama Tierra-Firme; the royal audiencia of Lima in Peru; the royal audiencia of Santa Fe of the New Kingdom of Granada; the royal audiencia of La Plata, Province of Los Charcas; the royal audiencia of San Francisco de Quito; the royal audiencia of Santiago de Chile, and the royal audiencia of Trinidad and part of Buenos Aires.

The viceroyalty of New Spain comprised the following districts: The district of the royal audiencia of Santo Domingo of the Spanish Island; the royal audiencia of Mexico; the royal audiencia of Guatamala; the royal audiencia of Guadaljara, and the royal audiencia of Manila, Philippine Islands.

In these districts there existed provinces governed by governors, and cities and sections at the head of

which were corregidores and alcaldes mayores. (See laws 1 to 13 of title 15, book 2d, I, Title I, and I, Title II, Book V, Laws of the Indies.)

Law third, title 15, book second, of the Laws of the Indies, provided:

> In the City of Mexico Tenuxtitlan, head of the Province of New Spain, there is another of our royal audiencias and chancelry, with a viceroy, governor and captain general, and our lieutenant who is president.

The fifth of the same title and book says:

> In the city of the Kingdoms of Lima, head of the provinces of Peru, there is another of our royal audiencia and chancelry, with a viceroy, governor and captain general, and our lieutenant who is president.

According to these two laws, the presidents of the royal audiencias and chancelries of Mexico and Lima were at the same time viceroys and governors general. On the other hand, the presidents of the royal audiencias and chancelries of Panama, Santa Fe, Chile, La Trinidad, and part of Buenos Aires, Santo Domingo, Guatemala, and the Philippine Islands were only governors and captains general, but not viceroys, and that of Guadalajara was only governor, but not viceroy nor captain general. (Laws 2, 3, 6, 7, 8, 11, 12, and 13, title 15, book 2, and I, title 2, book 5, Laws of the Indies.)

Therefore, in accordance with the laws of the Indies, there only existed two viceroys, the president of the royal audiencia of Mexico, head of the Provinces of

New Spain, and the president of the royal audiencia of Lima, head of the Provinces of Peru. Aside from these two viceroyalties, none other was established by the laws of the Indies. Later, by cedula of August 20, 1739, the district of the royal audiencia of Santa Fe de Bogota was constituted into a viceroyalty, adding to it the districts of the audiencias of Panama and Quito. (Note to law 8, title 15, book 2, Laws of the Indies.)

This is not contradicted by a quotation relied upon by counsel for plaintiffs in the court below, taken from page 65, volume 1, Colonial Legislation of Rodriguez San Pedro (Legislacion Ultramarina de Rodriguez San Pedro), the first paragraph of which reads as follows:

> In order to maintain peace and justice in the provinces of the Indies, supreme courts (audiencias) and magistrates were formerly instituted. But, as said provinces became sufficiently inhabited and ennobled, it was deemed convenient that, *at least in the principal ones*, governors of a higher designation be appointed, with the title of viceroys, who would justly perform the duties of presidents of the audiencias therein, and who would hold solely under their charge the government of those wide kingdoms and of all military operations that might occur therein, as captains general of the same and *who finally might do and would actually do, and who might take and would actually take care of all those things that the Royal Person would do and take care of if he were present*, and which they might deem suitable

> for the conversion and protection of the natives, the propagation of the Holy Spirit, political administration, and for the peace, tranquility, and increase of all spiritual and temporal affairs.

By the phrase "at least in the principal ones" the author undoubtedly referred to the viceroys of Peru and New Spain, and to the one subsequently created in the district of the audiencia of Panama.

It is specially noteworthy that laws 3 and 5 of said title 15, book 2, in providing that the presidents of the royal audiencias of Mexico and Lima should be at the same time viceroys, governors, and captains general, add "*and our lieutenant,*" while the other laws cited from said title and book, in providing that the presidents of the royal audiencias of the aforementioned districts should be governors and captains general, do not add that they should be *lieutenants* of the King.

The Governor General, then, of these islands, in accordance with the Laws of the Indies, did not have the authority of a viceroy, but only those of president of the royal audiencia, governor, and captain general, and was not a lieutenant of the King.

In harmony with the aforementioned laws, law 1, title 3, book 3, Laws of the Indies, which treats of the viceroys, says:

> It is our will, and we order, that the kingdoms of Peru and New Spain be ruled and governed by the viceroys *who represent our royal person and have the supreme authority,*

> *shall do and administer justice equally to our subjects and vassals,* and who will have to do with everything necessary to the preservation, tranquillity, advancement, and pacification of those provinces, as is provided and ordered by the laws of this title and Laws of the Indies.

And no mention is made in said title of viceroys for any other kingdom, district, or province of the Indies.

For this reason, laws 2, 3, and 5 of said title and book, the first of which declared the authority of the viceroys, the second provided that they should be captains general of their districts, and the third that they should be governors general in their districts and provinces, referred solely to the viceroys of Peru and New Spain. And, in the same manner, laws 4 and 11, which respectively provide that the viceroys shall be presidents of their audiencias and shall exercise the office of general of the armada or fleet in which he is to make his voyage; the twelfth, which prohibited the viceroys from taking their children, sons-in-law and daughters-in-law to the Indies; the eighteenth, which designated the place from which the minister of the audiencia is to depart to receive the viceroy; the nineteenth, which provided that viceroys are not to use the ceremony of the pall in their receptions; the twentieth, which prohibited certain officials from going to receive the viceroys; the twenty-first, which provided that when the houses in which the viceroys were to reside were occupied they should be vacated and the necessary repairs made; the twenty-seventh, which granted to the

viceroys the authority to pardon crimes; the thirty-seventh, which provided that the viceroy, in matters of justice, should allow appeals to the senior associate justice, without voting or showing any inclination or will; the forty-second, which commanded that the viceroy should not issue decrees with the name and seal of the king in matters of justice; the fifty-seventh, which provided that the viceroys could not liberate, distribute, spend, loan, nor anticipate the royal treasury, and provided the cases in which he might liberate and spend; and the sixty-seventh, which treated of the persons who should accompany a viceroy as his guard and suite—all referred solely to the viceroys of Peru and New Spain.

Law 19, above cited, fixed the amount which might be spent in receiving the viceroys of Peru and New Spain, and the seventy-second treated of the salaries of said viceroys of Peru and New Spain; and there are no analogous provisions in said title relating to viceroys of other kingdoms or provinces of the Indies; and laws 33, 55, 59, and 66 of said title contain only general provisions relative to viceroys.

Law 32, title 15, of book 2, which provides that the viceroys and presidents shall not vote in matters of justice and sign the sentences with the associate justices, refers solely to the viceroys of Lima (Peru) and Mexico (New Spain), as does the fifty-third, which commands that the viceroys shall not take cognizance, under the pretext of government, of any cases, but shall leave them to the subordinate audiencias. And, from laws 46, 47, 48, 50, 51, and 78

of the same title, it is clearly inferred that there were no more than said two viceroys of Peru and New Spain.

Title 16 of book 2 of the Laws of the Indies treats of the presidents and associate justices of the royal audiencias and chancelries of the Indies. Law 44 of said title, which provided that viceroys may take cognizance of criminal cases against associate justices, alcaldes, and fiscals, also refers to those of Lima and Mexico.

Title 15 of book 3 of the Laws of the Indies treats of precedence, ceremonies, and courtesies. Law 10 of said title, which provides that the ceremonies which are observed with the royal person in his chapel, shall also be observed in the Indies with the viceroys, mentions no other than those of Peru and New Spain; and from laws 1, 11, 21, 26, 43, and 65 of said title and book it is also clearly inferred that no other viceroys existed than those of Peru and New Spain.

The position of governor general was inferior and subordinate to that of viceroy. By the italicized words of law 1, title 3, book 3, Laws of the Indies, quoted above, it is shown that the viceroys of Peru and New Spain were the representatives of the royal person each in his respective viceroyalty. The jurisdiction of these viceroys extended over all the Indies, divided into the two Kingdoms of Peru and New Spain, while that of the presidents of audiencias, governors, and captains general was limited each to his particular province or district.

Law 2 of said title 3, book 3, referring to the viceroys of Peru and New Spain, says:

> * * * and provide for everything we might do and provide for, of whatever quality and condition it may be in the provinces under their charge, as if the same were governed by ourselves, in all cases *where no special prohibition exists.* And we command and charge our royal audiencias of Peru and New Spain, subject and subordinate to the government and jurisdiction of the viceroys, and *all the governors,* justices, subjects, and our vassals, ecclesiastical and secular, of whatever state, condition, eminence, or dignity, to obey and respect them as persons that represent us, to keep, fulfill, and execute their orders and commands, written and verbal, and plead no excuses or delays to their letters, orders, and commands, nor give to them other sense, interpretation, or declaration, nor retain them until more exigent, nor confer together about them, nor await other command, but treat them just as if issued by our person or sent in letters signed by our royal hand.

By this law all the royal audiencias of Peru and New Spain, as well as all the governors, courts, subjects, and vassals of the King in the Indies, were subject to the authority of the respective viceroys.

Consequent to the subordination of the royal audiencias and courts to the authority of the viceroy, law 49, title 15, book 2, directed that the subordinate audiencias advise the viceroys of agreements reached in matters of government, and that both correspond

with and render account to the King; and law 50 ordered that the subordinate audiencias follow whatsoever the viceroys might prescribe in governmental business, war, and the treasury; and 51, that the presidents and subordinate audiencias obey the orders of the viceroys in the cases set forth in said laws.

Law 1, title 16, book 2, after providing that the viceroys of Peru and New Spain be presidents of the royal audiencias in the cities of Lima and Mexico, adds:

> And they shall have the chief jurisdiction in their districts of the audiencias of La Plata, Quito, Chile, and Panama, and in Mexico of the districts of the audiencia of Guadalajara.

Law 2 provides that in the absence of the president, governor, and captain general from Tierra-Firme, the viceroy of Peru may appoint one to act *pro tem;* and the third, that the viceroy of Peru have a person appointed in Chile to act as governor on the death of that governor.

Law 58, title 15, book 2, says:

> Whereas report having reached us of the inconveniences resulting from the viceroys of New Spain appointing persons resident in the Philippine Islands to serve in the absence of the president, governor, and captain general thereof until the arrival of the person to govern pro tem. or of right, according to our will and pleasure, we order and command that in case of the absence of the governor and captain general of those islands, by death or other accident, our royal audiencia in the city of Ma-

nila shall administer the civil affairs thereof; and the senior associate justice (oidor) shall administer military affairs; he will in all military matters relating to the defense and safeguarding of said islands, and the precautions and other things pertinent to this end take the advice of army officers that may be there, and consult with them for the better direction of affairs. And we command the viceroy of New Spain to cease exercising the powers conferred by our cedula of September 13, 1668, and others authorizing him to appoint persons through the channels in vogue up to the present time—which we hereby revoke and annul—the power to send persons to fill such said posts ad interim being in full force and vigor. And because it is proper that the audiencia of Manila in conformity herewith provide for the execution of the provisions of this new law, we command the said audiencia, in the event of the death of the president, to maintain that republic in all peace, tranquillity, and good government, executing justice everywhere; and that the senior associate justice, in the absence of the president, be most particularly assiduous and vigilant in all matters pertaining to military affairs, endeavoring to keep the presidios well garrisoned and with the defenses requisite for their preservation, and the soldiers well disciplined for the service.

It appears, therefore, that the viceroy of New Spain formerly appointed the person resident in the Philippine Islands to act as president, governor, and captain general thereof, who exercised the authority

in case of vacancy, a practice revoked by this law, which provided that in the absence of the governor and captain general, by death or from whatever other cause, the audiencia should administer the civil affairs and the senior associate justice the military ones.

All the above, then, goes to show that the authority and hierarchy of the viceroys were greater than that of the presidents of the audiencias, governors, and captains general. For this reason, law 10, title 15, book 3, Laws of the Indies, provided that the state surrounding the person of the King in his chapel should be observed likewise in the case of the viceroys of Peru and New Spain, but did not extend the same to the persons of the presidents of the audiencias, governors, and captains general; and law 61 of the same title and book provided that seigniory be granted the viceroys and they be addressed as royalty, but not so the presidents of the royal audiencias, with reference to whom law 52 provided that—

> the governors and captains general of the provinces of our Indies shall not consent to or allow such address in writing or verbally or in any other form unless entitled to it.

The powers of the governor general of the Philippine Islands were set forth in law 11, title 15, book 2, of the laws of the Indies, which said:

> In the city of Manila, island of Luzon, capital of the Philippines, another audiencia and royal chancelry is established, with

a president, who shall be the governor and captain general; four associate judges (oidores), who shall also be criminal judges (alcaldes del crimen); one fiscal, one high constable, one vice grand chancellor (teniente de gran chanceler), and the other necessary ministers and officials; and the said audiencia shall have as its district the lands of the said island of Luzon already discovered and which may be discovered. And we order that the governor and captain general of the said islands and provinces, and president of the royal audiencia of the same, hold exclusively the superior government of the whole district of said audiencia in peace and war *and make in our royal name those sentences and grant those favors which, in conformity with the laws of this compilation and of these kingdoms of Castile and with the instructions and powers received from us, he may and ought to make;* and in all those administrative cases and matters of importance the said president governor shall try the same together with the oidores of said audiencia in order that they may give him their opinion in consultation, and after hearing the same he shall provide for what is best for the service of God and our own interests and the peace and tranquillity of the said province and community.

Therefore, the Governor General could exercise no power except such as was authorized by the Laws of the Indies and the Kingdoms of Castile, and such as he was from time to time specially authorized by the King to exercise. He had the powers of the president

of the royal audiencia, governor and captain general, and those of issuing orders and granting favors. The powers of the presidents of the audiencias and royal courts of the Indies are stated in title 16, book 2; those of governors in title 10, book 3; and the instructions and favors are stated in title 2, book 3, of said laws. But no provision can be found in these laws or elsewhere that empowers the governors general of these islands to make concessions of ownership and exclusive right in the sea and its shores.

Second. *But if the Governor General of the Philippine Islands had the powers that the Laws of the Indies conferred upon the viceroys of Peru and New Spain, yet those viceroys had no authority to make concessions of lands bathed by the sea, or that were a part of the beach and lay within the maritime zone.*

Law 2, above cited, which provides that the viceroys of Peru and New Spain may—

> provide for everything we might do and provide for, of whatever quality and condition it may be in the provinces under their charge, as if the same were governed by ourselves, in all cases *where no special prohibition exists,*

shows that the most ample and discretionary powers conferred by them on the viceroys of Peru and New Spain were limited by what was expressly prohibited.

Law 6, city ordinances of Felipe II, 1523 and 1680 (vol. 4, p. 473, colonial legislation by Coronado), provides:

> No territory or land for a new town shall be granted, nor shall one be established at sea-

> ports, nor at any place which at any time might result in prejudice to our royal crown, or to the nation, *because it is our will that such lands be reserved for us.*

This law is the sixth, title 7, book 4, of the Laws of the Indies.

Law ninth, title 17, book 4, Laws of the Indies, relied upon by counsel for plaintiff, which provides that:

> The viceroys and audiencias see to the interests of good government in matters relating to grazing lands, forests, waters, and public buildings, and provide for whatever may be proper for the people and the perpetuity of the land,

instead of showing that the viceroys had the power to make concessions like the one here discussed, in connection with laws fifth and seventh of the same title, is evidence that they could not grant such class of concessions.

Law fifth says:

> We ordained that grazing lands, forests, *and waters be for common use in the Indies,* and some persons, without license from us, have occupied a very great part of the lands, not allowing anyone to put up a corral or fetch their herds there. *We order that the use of grazing lands, forests, and waters of the provinces of the Indies be common to all the residents now there and hereafter to come,* to be enjoyed freely, and they may erect there next to any hut their cabins and bring their herds there, together or separately, without restric-

> tions of any regulations, which, if necessary for this purpose, we hereby revoke and make null and void. And we order all councils, courts of justice, and officials to keep and comply with and enforce compliance to this our law, and any person violating it will be liable to a penalty of five thousand dollars, gold, to be levied on his person and property for our chamber (camara).

The seventh law adds:

> The forests, grazing lands, and waters of the places and the forests contained in grants which were made, or which we may make, of seigniories in the Indies, must be common to the Spaniards and natives alike. *And we order the viceroys and audiencias to be guided thereby.*

According to these two laws the grazing lands, forests, and waters were things held in common, and not only could not be the subject of concession, but in the event of having been included in any award granted were excluded from it and continued to be for the common benefit.

The royal cedula of October 15, 1754, which it is insisted delegated power to execute the instrument in question, refers only to the composition of the unappropriated lands which had been held for the number of years required by said royal cedula, and not to the concession of the sea and its shores.

By royal decree of March 31, 1856 (Berriz, Dictionary of Administration, 5, 31), which repealed that of August 6, 1854, and which was in force at the date of

the concession in question, and the purpose of which was

> to endow the governor captains general of colonies with the necessary and convenient means of action to exercise the superior authority, avoiding dire instructions to the interest of the estate, and to assure to the fiscal affairs in those provinces the conditions of administrative independence which they will need to operate with regularity and advantageous results,

it was provided in article 1 that—

> The governor captains general will exercise as superintendents with respect to the revenue collection (administracion rentistica) the high governmental intervention which should correspond to them as superior authorities of the colonial provinces:

and by article 2 the privileges of the governor captains general were specifically fixed for the convenient and regular exercise of their economic functions; but in none of the privileges granted therein can be found included that of granting concessions of the character in question, notwithstanding such a concession is an economic function, and concessions of ownership of public domain is treated of.

Third. *The authorities in the Philippine Islands could not grant, nor could Jose Camps acquire, a private right in the property in question, to the exclusion of the public, because it was of the public domain, and the rights of the public therein could not be destroyed.*

The title of Partidas III speaks of things in which man may acquire ownership, and how he may obtain it. Law 2 of said title classifies them into things common to all animals and things common to all men, things which belong in common to a society, villa, or castle, or any other place inhabited by man, and things that belong to a person, and those in which he may obtain or lose ownership. Law 3, title 28, of part 3, defines as common things to both men and animals the sea and the shores, since according to that law all may use it as it may be necessary to them, and, consequently, it declares that all may have the benefit of the sea and of the beach, fishing or sailing, or doing anything else that may be profitable. Law 4 of the same title and part provides that all may erect on the beaches a house or hut or other construction, provided it does not interfere with public use, as well as build rowboats and other craft, and dry nets or remake them; and the fifth law declares that all a person may find on the beach becomes his property. The laws of partition obtained at the time the concession in question was made, as the law of waters had not then been published.

The sea was, therefore, common, not only to men, but also to animals, and no one could acquire private ownership thereof. The decisions of April 15, 1881, and January 28, 1878, relied upon in support of the claim that the dominion of the nation over the sea is of a private character and may be acquired by prescription, refer, the first, to property owned by the state, in which no common interest is declared, and,

second, to marshes; and articles 11 and 12 of the law of May 9, 1833, refer to state property under private control. These citations, therefore, do not apply to the case in question, since the sea is something common to men and animals under the laws of partition, or of public dominion under the civil code now in force.

It is admitted that, according to the decisions of the Supreme Court of Spain of April 30, 1863, and May 1 of the same year, under the legislation of "partidas," the sea and its shores may be regulated, and the public use be limited, and concessions of ownership and rights therein be granted. But the Government can not concede to a person the ownership of a part of the sea in order that he may profit *exclusively* by it as such, depriving the public of the benefit and the common use of such part. Whilst the sea remains the sea, it must continue to be of public domain, devoted to the use of the public, and private ownership of a thing of public dominion is not conceivable.

The law of waters of August 3, 1866, extended to the Philippine Islands by royal order of the eighth of the same month and year, and which, as above stated, appears to be but a codification of pre-existing laws, confirms this view.

That law provides in article 1 that the maritime zone that encircles the coasts throughout the extent determined by international law, is of national domain. Chapter 2 speaks of the uses and rights in the sea and its shores, specifying the use and the

rights and the benefits the public may derive from the waters of the sea and from its shores, as well as the privileges that may be granted therein to private parties. Aside from these concessions, no others can be made, and among them is not included the concession to a private party of the ownership of a part of the sea in order that he may profit by such part to the exclusion of the public use.

The law of ports of the peninsula of May 7, 1880, prescribes also in article 1 that the seashore is of national domain and public use. Chapter 7 of said law speaks of the concessions and rights in the borders of the sea and the beaches which may be made to private parties, and in none of its articles is concession authorized of ownership and possession of a part of the sea as such to a private person. The law of waters, as well as the law of ports cited, are the reflex of legislation prior thereto.

The Civil Code, which took effect December 8, 1889, says in article 339 that—

> Properties of public domain are those devoted to the public use, such as roads, canals, rivers, waterfalls, ports and bridges constructed by the state, banks and beaches, roadsteads and others analogous.

Manresa, in his work Commentaries on the Spanish Civil Code (vol. 3, p. 53), speaking of public property, says:

> But what sort of judicial relation does the state maintain with property of public domain? It is readily seen that it is not a property relationship but one of control, which

entails as a consequence certain judicial prerogatives in favor of the state as territorial sovereign. The ownership of these properties, with the special character of joint ownership and use and enjoyment in general, by virtue of the application thereof to the satisfaction of joint necessities, is vested while they are in such possession, in the national society (or provincial or municipal as the case may be). "Its purpose" says Ihering, "is not that of serving the State as a judicial personage, but the citizens. They are meant for a common and public service which prevents them, warns Laurent, from being the object of real appropriation by the State or by private parties."

The function which the State definitely exercises in respect to those properties incident to the special lawful relation that they imply, arises from the State being the legitimate representative of society. It is a true function of policy, social and administrative, whether for security or public service. The State has under its sovereign authority all those properties, in order that they may answer a general purpose; it cares for them, preserves them, and regulates them, when necessary, as to the use. Such properties are, in short, a national property, provincial, or municipal, under the safeguard of the respective government.

Colmeiro, in his work, Administrative Law, 4th edition, volume 2, page 5, says:

Public properties constitute part of the national territory that society maintains under common dominion, because it can not be

divided, inasmuch as if divided they would lose their utility, or, in short, because, according to their nature they are not suitable for private appropriation; they are covered by sovereign authority, they spring from sovereign right, and comprise everything not the property of individuals or corporations. The administration issues regulations as to rights therein, so that no individual interest can interfere with the public use to which the law devotes them.

The enjoyment or benefit in common characterizes the said class of properties, until they are converted into others, if they change their purpose, and, on the other hand, the application of anything whatever to public service places it under public dominion.

It is an unavoidable consequence of the principles stated that properties such as those have no place in business in general, nor can they be acquired *for that reason by prescription. Neither can the Government alienate them,* primarily because they are national property, and in the second place because the great fluctuation in the necessities of the State is an obstacle to all definite abandonment; but it is within the scope of its authority to state whether or not the former application has ceased to be advantageous to the public, which is within the limits of an administrative act. In such case it turns them over to the administration of the common law, and intrusts the ordinary courts with the exercise of their jurisdiction.

On page 9 of the same volume is added:

> The use of and rights in the seas are common to all men, because the immensity of the waters permits no real and permanent occupation, nor does any reason exist that grants exclusive rights to enjoy properties made inexhaustible by nature.

That no private rights could be acquired in water anywhere in the Spanish dominion, except by royal order, is shown by royal order of May 24, 1853, which reads as follows:

> In the proceedings instituted in that provincial government, at the instance of Pedro Aparicio, requesting royal authority for the construction of a mill, making use of the waters of the Cuerpo de Hombre River, it appears that the petitioner based his right upon an arbitrary taking of possession which he says is customary, according to which private individuals desirous of appropriating the river for their own uses are only required to throw therein stones to mark off the part they intend using, and they believe that in this manner the occupant acquires rights of ownership and possession. Therefore, Her Majesty the Queen (whom God preserve) has directed that your excellency be instructed not to permit such improper custom, *which is contrary to the laws of the Kingdom, according to which the waters of rivers and their beds are of public ownership, and, therefore, not susceptible of appropriation by private individuals, and, with the exception of the common use vested in*

> *all, no private use can be established therein without royal authority and in accordance with the regulations of public administration.* These principles must invariably be observed in that province, if it be a fact that such abuse exists, as well as in all other provinces, to which end this order is published in the Gazette and the Official Bulletin of this department for general observance.
>
> By royal order, etc.—Aranjuez, May 24, 1853. (Coleccion Legislativa, vol. 59, p. 109.)

That the governor general had no power to issue the grant in question is also conclusively shown by the fact that there was a special method prescribed by law whereby ordinary lots or lands in and ~~above~~ about Manila had to be granted.

Law VIII, title 12 of book 4, of the Laws of the Indies (see 4 Legislacion Ultramarina, by Rodriguez San Pedro, 668), provided as follows:

> We command that if a petition be presented requesting the grant of lots or lands in a city or town (villa) in which one of our *audiencias* is situated, such presentation be made to the municipal council (cabildo), and if it should grant it, two members of the council shall be designated as a committee to report to the viceroy or *president* the action of the council, and the viceroy or *president* and the councilmen designated having examined the matter, the grant (despacho) shall be signed by all in the presence of the clerk of the council and delivered to him for entry upon the book of the council; and if the petition should be for the distribution of waters and lands for sugar

plantations, it be first presented to the viceroy or president and by him sent to the municipal council, which, upon approving it, shall inform the viceroy or president of its action in order that he may issue the proper orders.

Up to the year 1886 the only audiencia in the Philippine Islands was that of Manila, which had been created on May 5, 1582. It was suppressed in 1589, and again established in 1596. It was not until February 26, 1886, that another audiencia was created in the Philippines, in Cebu. (Alcubilla, vol. 1, p. 761; vol. 7, p. 766.)

If the Governor General had not the power to grant a lot or tract of land lying above the sea, it necessarily follows that he was not vested with the extraordinary and unusual power of granting title to the seashore, or to lands lying beneath the sea.

Laws and orders bearing date subsequent to the instrument in question show that the Governor General of the Philippine Islands had no powers to grant the concession here claimed.

The law of waters, of August 13, 1866, which, as heretofore stated, appears to be a codification of the then existing laws relating to waters, requires in article 22 authorization granted by the secretary of the proper department to build for private use in the sea or on its shores or contiguous lands, piers, landings, shipyards, or towpaths, or to form salt pits, factories, or any other industrial establishment whatever.

By royal orders of May 21, 1862, and April 10, 1863, there was extended to Cuba, Porto Rico, and

the Philippines all the provisions concerning the distribution and profit of the public waters, for private benefit, in force in the peninsula. They were included in royal order of August 8, 1866 (Berriz guia del Comprador de Terrenos Realgos, 159).

In accordance with the provisions of those orders, royal authorization was necessary, and consequently that of the Governor General of the Philippine Islands was not sufficient for the establishment of any enterprise of private interest which had as its object, or which could have immediate relation to: First, the navigation of the rivers or their fitness to conduct floating rafts or logs; second, the course and regulation of them, whether or not navigable; third, the use, profit, and distribution of their waters; fourth, the construction of all kinds of new works in the rivers themselves, including all kinds of bridges (Rodriguez, San Pedro, Legislacion Ultramarina, vol. 4, p. 534).

The royal order of April 29, 1860, provided in article 1 that royal authorization should be required to carry on any enterprise of public or private interest which might have for its object, first, the benefits derived from the waters of the rivers, small rivers, creeks, or any other kind of natural currents, no matter of what denomination; second, the benefits of the waters of the springs, swamps, lakes, ponds, lagoons, or basins arising or formed in lands of the state or of the public, and of those which had no known private owner; third, the profits derived from subterranean waters, whenever boring, digging, or investigations

had to be made for same, and were to be made on lands of the state and of the community, or on lands which did not belong to a private party. (Rodriguez, San Pedro, Legislacion Ultramarina, vol. 4, p. 542.)

If royal authorization was necessary to obtain the profits derived from the waters of the rivers, etc., concession which is of minor importance, can it be maintained that because of lack of a positive law upon the subject, the governor general could grant concessions for the permanent and exclusive benefits of the sea and beaches?

The royal order of April 10, 1863, authorizing the superior civil governor of the island of Cuba to give permission as to rights of public waters in accordance with the legislation of the bureau established in the Peninsula, shows that before that date said superior civil governor had no such authority. Said royal order says:

> MOST EXCELLENT SIR: In view of the letter of Y. E. No. 118, dated January 15, ultimo, in which you give an account of the concession granted by that superior civil governor to D. Juan Peira to construct a dam on the Almendarez River for the purpose of utilizing its waters as motive power, the engines applicable to a nail factory, the Queen has authorized Y. E. to give permission in the meantime not only in this case, but also to all others that may occur, subject to the legislation of the bureau in force in the Peninsula, while it is being determined what is to govern that island in the matter of private

profits derived from public waters. (Rodriguez, San Pedro, vol. 4, p. 545.)

In 1863, then, or subsequent to the date of the concession granted to D. Jose Camps, here under consideration, the colonial governor had no power to give permission to derive profits from public waters, and through the royal order cited permission was for the first time given to the superior civil governor of Cuba to make such concessions. If this is so with reference to the benefits derived from public waters, there is greater reason to maintain that the Governor of the Philippines had no power in the year 1859 to grant to D. Jose Camps a part of the sea.

These authorities fully sustain the contention that Jose Camps could not acquire, nor could the Governor-General of the Philippine Islands impart to him, an exclusive right in the property in litigation.

Fourth. *On February 12, 1859, the date of the alleged concession, the King of Spain himself was without authority to make such concession.*

Under the constitution of Spain, which was put in force in 1845, and after being for a time suspended, again became effective in 1854, the following were the powers reserved to the King:

TITLE VI.

ARTICLE. 42. The person of the King is inviolable and is not subject to responsibility. The (cabinet) ministers are responsible.

ART. 43. The power to enforce the execution of the laws is vested in the King, and his authority extends to everything tending to the

maintenance of order in the interior and the security of the State abroad, in accordance with the constitution and the laws.

ART. 44. The King sanctions and promulgates the laws.

ART. 45. In addition to the prerogatives vested in the King by the Constitution, he shall have the following:

1. Issue the decrees, regulations, and instructions which may be proper, for the execution of the laws.

2. See that justice is promptly and properly administered throughout the Kingdom.

3. Pardon delinquents in accordance with the law.

4. Declare war and make and ratify peace, and then submit a report accompanied by documents to the Cortes.

5. Dispose of the armed forces, distributing them in the most suitable manner.

6. Direct diplomatic and commercial relations with the other powers.

7. See to the coinage of money, which shall bear his bust and name.

8. Decree the application of the funds destined to each branch of the public administration.

9. Appoint all public employees and grant honors and distinctions of all kinds in accordance with the laws.

10. Appoint and remove the cabinet ministers without restriction.

ART. 46. The King requires the authority of a special law:

1. To alienate, cede, or exchange any part of Spanish territory.

2. To admit foreign troops into the Kingdom.

3. To ratify treaties of offensive alliance, special commercial treaties, and those which provide subsidies to some foreign power.

4. To abdicate the Crown to his immediate successor.

ART. 47. The King shall inform the Cortes before contracting marriage; and shall submit for their approval the marriage stipulations and contracts, which are to be made the subject of a law.

The same shall be observed with respect to the marriage of the immediate successor to the Crown.

Neither the King nor his immediate successor shall contract marriage with a person who under the law is excluded from succession to the Crown.

ART. 48. The allowance of the King and his family shall be fixed by the Cortes at the beginning of each reign.

From neither of these provisions can it be inferred that the King had the power, without special laws, to vest in a private individual any rights in property which were common to the public. He, of course, held, in his private capacity, the title to Crown lands, and, as any other individual, might convey the same; but where the entire public had a common right to property, he, under this constitution, possessed no more authority to convey the same than any other individual; and, if the King himself possessed no such power, it necessarily follows that

such authority could not be exercised by one of his subordinate officials.

If it were provided in this constitution that the colonies should be governed by special laws, it can not be inferred from such provision that it was intended that the King might govern them at his will; but that special laws would, from time to time as need arose, be enacted for their government.

Fifth. *The authority of the Governor General to make the concession to Jose Camps can not be presumed.*

The case of *United States* v. *Arredondo* (6 Pet., 691, 728) is relied on as authority that this court must conclusively presume that the Governor General had the power to make this concession to Camps.

That case involved the validity of a grant executed by one Don Alexandro Ramirez, intendant of the army, subdelegate superintendent general of the royal domain of the island of Cuba and the two Floridas, president of the tribunal of accounts and of the board of tithes, superintendent of the department of the crusades, judge particular of vessels putting in port by stress of weather, and protector of the royal lottery, superior chief and inspector of the royal factory of cigars, etc., to Arredondo & Son. With reference to the settlement of this and many other Spanish grants in Florida there had been a long series of acts passed by Congress, and after reviewing at length this legislation the court said:

> It is thus clearly evidenced, by the acts, the words, and intentions of the legislature, that in considering these claims by the special

> tribunals, the authority of the officer making the grant, or other evidence of claim to lands, formed no item in the title it conferred; that the United States never made that a point in issue between them and the claimants, to be even considered, much less adjudicated (p. 727).

And, in considering the contention that it was necessary for the claimant, notwithstanding this course of legislation, to show that authority was vested in Ramirez to execute the grant, the court further said:

> To apply the principle contended for to the various papers which are sent from the general or local land offices, as instructions to officers under their direction; or evidence of incomplete title to land, by requiring any other evidence of the authority by which it was done, than the signature of the officer, the genuineness of the paper, proved by witnesses or authenticated by an official seal, would be not only of dangerous tendency, but an entire novelty in our jurisprudence, as "a rule of equity or evidence," or "principle of law or justice." The judicial history of the landed controversies, under the land laws of Virginia and North Carolina, as construed and acted on within those States, and in those where the lands ceded by these States to the United States lie, and Pennsylvania, whose land tenures are very similar in substance, in all which the origin of titles is in very general, vague, inceptive equity, will show the universal adoption of the rule that the acts of public officers in disposing of public lands by color

> or claim of public authority are evidence thereof, until the contrary appears, by the showing of those who oppose the title set up under it, and deny the power by which it is professed to be granted. Without the recognition of this principle there would be no safety in title papers and no security for the enjoyment of property under them. *It is true that a grant made without authority is void under all governments* (9 Cr., 99; 5 Wheat., 503), *but in all the question is, on whom the law throws the burden of proof of its existence or non-existence. A grant is void unless the grantor has the power to make it; but it is not void because the grantee does not prove or produce it* (p. 728).

And the court thereafter announced the general principle controlling instruments of this kind in the following language:

> It is a universal principle that, where power or jurisdiction is delegated to any public officer or tribunal over a subject matter, and its exercise is confined to his or their discretion, the acts so done are binding and valid as to the subject matter and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the authority and power conferred. *The only questions which can arise between an individual claiming a right under the acts done, and the public, or any person denying its validity, are power in the officer and fraud in the party* (p. 729).

Therefore, in that case the court expressly recognized that the authority of the officer who has undertaken to execute an instrument of this character, is a matter for investigation, and if he be found to possess no such authority, the instrument is void and can not support an action.

The court there presumed that Ramirez possessed the necessary authority, because Congress, although having often legislated upon the subject, had never questioned it or intimated that such question should be raised; and, further, because it was shown that the King of Spain, by royal order of September 3, 1817, had directed him "to facilitate the increase of the population of those provinces by all the means which his zeal and prudence could dictate," which order was recited in the grant as one of the authorities under which it was made, together with the general superintendence of the domain of the provinces (p. 734).

In the present case the concession is not of lands which are subject to acquisition by a private individual, but are a part of the sea, the attempted concession of which by officials of this character is something wholly unknown, *there apparently being no parallel case in the Philippine Islands or elsewhere in the Spanish dominions.*

In *Mann* v. *Tacoma Land Company* (153 U. S., 273) the facts were that on October 8, 1844, a grant was issued to one Juan Miranda by the then Mexican governor of California for certain lands lying in that territory. After California had been acquired by

the United States, a litigation had been instituted and a decision had been rendered therein adversely to the claimant, and patents for the land had been issued to other parties; but, it being subsequently clearly shown to Congress by additional evidence that the grant was not a fraudulent one, an act was passed granting to Thomas B. Valentine an amount of scrip equal to the amount of land contained in the grant to Miranda, which act provided that the scrip might be located on the unoccupied and unappropriated public lands of the United States. A part of the Miranda grant was on tide flats and overflowed land, and the scrip issued therefor was laid on tide lands covered and uncovered by the ebb and flow of the tide in Commencement Bay near the city of Tacoma, Territory of Washington. The court held that such location was void, as the general legislation of Congress in respect to public lands does not extend to tide lands.

In *Shively* v. *Bowlby* (152 U. S., 1) this court said:

> The United States, while they hold country as a Territory, have all the powers both of national and municipal government, and may grant, for appropriate purposes, titles or rights in the soil below high-water mark of tide-waters. But they have never done so by general laws; and unless in some case of international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the people and with the object for which the Territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters, and

in the soil under them, to the control of the States, respectively, when organized and admitted into the Union (p. 58).

These cases clearly show that no presumption whatever will be indulged in favor of a grant which purports to convey a part of the seashore or lands lying beneath the sea.

That none but the supreme power can confer private rights upon lands in any part of the sea, or upon the shore, is also shown by the rule of common law upon the subject.

While the King of England had the power to grant special privileges, as of fishing in the sea, yet he never, even before the Magna Charta, had authority to grant such privileges to the exclusion of the common rights of the public. It is true that ancient grants of privileges, dating prior to the Magna Charta, were subsequently recognized as being valid and enforceable against the public, but this was based upon acts of Parliament whereby, as a compromise of conflicting interests, the validity of such grants was conceded, though the power of the King to issue them was never recognized.

The Free Fisheries of Whitstable, 11 House of Lords Cases, 192.

Williams v. *Wilcox*, 8 Ad. & Ellis, 314, 332.

Duke of Somerset v. *Fogwell*, 5 Barn. & Cress., 875.

In *Queen* v. *Keyn* (Law Journal, new series, 46 (1877), p. 17) it was held by the supreme court of judicature that common-law criminal jurisdiction

ceased, in the absence of special act of Parliament, at low-water mark, which was an implied holding that the King's title did not extend beyond that point.

In *City of Galveston* v. *Menard* (23 Tex., 349, 395), after referring to the common-law rules relating to the shores of the sea, etc., it was said:

> By the civil law the shores of the sea, of bays, and navigable streams generally, as well as the tidewaters, were jealously guarded from private appropriation and reserved for common use.

Clearly, therefore, the court will indulge in no presumption as to the validity of the grant to Jose Camps, but will require some clear and positive evidence of authority existing in the Governor General to execute said grant.

In fact, in *Tiglao* v. *Insular Government of the Philippine Islands* (215 U. S., 410), this court held that a grant which was executed by certain subordinate officials was void, because such officials were vested with no authority to execute the same; and there is no reason why any presumption should arise in the present case that did not arise in that one.

III.

The grant to Jose Camps was a conditional one, and the conditions specified therein not having been complied with, all title thereunder is defeated.

A perusal of the grant clearly shows that the consideration upon which it was based was that the lands should be reclaimed and should be put to some use

that would be of benefit to maritime commerce. The many cases cited by counsel in their brief, which involved grants by the Government of Mexico, and by the Spanish Government of lands in Florida, have but little or no application to this case.

The lands there granted were subject to immediate use. Here the lands described, which, as stated in the grant, were covered by the sea, were absolutely worthless without reclamation. Of necessity, before they could be put to any use whatever, it was necessary that they be filled in; and before such work was done, the lands were continually in use by the public, because there are intimations in the record that that portion which is not yet filled in are used for fishing purposes.

Nor was it within the power of the governor general, or apparently of the King himself, to deprive the public of this use, until, at least, the lands were filled in.

Hence, the reclamation of the land by filling it in as specified in the grant, was necessarily a condition precedent to the ouster of the public therefrom, and the vestiture of the title in Jose Camps.

The grant recites that Camps petitioned for the concession of a tract of land 200 brazas long and 100 brazas wide, upon which, *after having been filled in*, he intended to remove his artistic establishment "Camps é Hijos," and a manufactory of hemp rope; that the alcalde mayor 1° of Manila, after consulting with the director of public works, was of the opinion that the waste land asked for should be granted to Camps, *as*

it was then covered by the sea, was far from the houses situated on the Binondo Beach, and was very suitable for the purposes of maritime commerce, and convenient for the purpose of public adornment; and that the establishment of Camps é Hijos be located thereon provided certain conditions with reference to the construction of buildings looking to possible military operations should be observed; and that the official and industrial merits of Camps and the offer of protection stated in a previous decree when refused a sale asked for by him were also taken into consideration.

It is clear from these recitals that the consideration for the grant was for the benefits that would be derived to the public by the establishment on this land of Camps's industries, and the consequent increase of commerce, and that Camps's public services were a mere incident.

While counsel elaborate in their brief upon the gratitude of the Spanish Government for Camps's eminent services, yet there is no evidence in the record which indicates the extent and character of such services, and whether the Government deemed such services of any special merit or not.

Upon these considerations the instrument declares that there is—

> granted the possession and ownership of a parcel of land 200 brazas in length and 100 brazas in width, *covered at present by the waters of the sea*, near the Binondo Beach, which land is situated alongside the Murallon del Norte, and

> requested authority to fill in the same at his expense is also hereby granted, subject to the following conditions and restrictions:
>
> First. *The land to be filled in* shall form a quadrangle 200 brazas long and 100 brazas wide, beginning on the longer side nearest to the Pasig River, at a point 25 varas from the bridge connecting the waters of the river and of the bay and running parallel with the wharf toward the lighthouse;

and three other conditions with reference to the character of buildings to be constructed thereon.

It is insisted for plaintiffs that this instrument makes two separate and distinct grants: First, a grant of the soil beneath the sea, and, second, a grant of authority to fill in the same.

But, while the language of the instrument will bear a construction of this kind, yet, as above stated, the purpose to be accomplished by the instrument, and the necessary effect of such a construction, must be taken into consideration; and, as a present conveyance of the soil beneath the sea, without the reclamation thereof by filling it in, could bestow no benefit whatever upon Camps, it must have been intended that no title should pass to the soil otherwise than as the same should be filled in.

It is substantially admitted that if this instrument had purported to convey only a title to the bottom of the sea, no right would have passed to reclaim the same. Can it be believed then that such a conveyance which would have vested no substantial right in the grantee, and which would not have conferred

upon him any beneficial interest whatever, would have been valid in law? And, is there any semblance of authority shown anywhere which indicates that the Governor General was vested with power to execute any such grant? If, then, the grant to the soil alone would have been invalid, it can not be construed otherwise than in connection with the grant of authority to fill in the tract described; and however far the authority may extend, yet no rights in the land described can be acquired until the authority is actually exercised and the filling in has been accomplished.

IV.

No title was acquired to these premises by prescription.

Plaintiffs were not purchasers in good faith, and therefore could not acquire title by prescription under section 1950 of the Civil Code and law 9, title 29, part 3, in force at the time of the sale.

In *Tiglao* v. *Insular Government* (215 U. S., 410, 416) it was held that a title which was void because the persons issuing the same had no authority to do so would not aid a party holding thereunder, the court saying:

> But if the public facts known by the grantee showed that the conveyance to him was void, we understand that it would not constitute a starting point for the running of time, and that the grantee's actual belief could not help his case. Indeed, in such a case he would not be regarded as holding in good faith within the requirement of the

decree, because a man is not allowed to take advantage of his ignorance of law. The subject is fully expounded in *Hayes* v. *United States* (170 U. S., 637, 650, et seq.).

Furthermore, there has been no possession of the lands not reclaimed.

V.

The Treaty of Paris did not vest in any private individual, as against the Government of the United States, any other and higher rights than such as were possessed against the Government of Spain.

The only provisions in the Treaty of Paris which have a bearing upon the question here presented are Article VIII and a part of Article IX, which read as follows:

ARTICLE VIII.

In conformity with the provisions of Articles I, II, and III of this treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other islands in the West Indies, in the island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways, and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain.

And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces,

municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals of whatsoever nationality such individuals may be.

The aforesaid relinquishment or cession, as the case may be, includes all documents exclusively referring to the sovereignty relinquished or ceded that may exist in the archives of the peninsula. Where any document in such archives only in part relates to said sovereignty, a copy of such part will be furnished whenever it shall be requested. Like rules shall be reciprocally observed in favor of Spain in respect of documents in the archives of the islands above referred to.

In the aforesaid relinquishment or cession, as the case may be, are also included such rights as the Crown of Spain and its authorities possess in respect of the official archives and records, executive as well as judicial, in the islands above referred to, which relate to said islands or the rights and property of their inhabitants. Such archives and records shall be carefully preserved, and private persons shall, without distinction, have the right to require, in accordance with law, authenticated copies of the contracts, wills, and other instruments forming part of notarial protocols or files, or which may be contained in the executive or judicial archives, be the latter in Spain or in the islands aforesaid.

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ARTICLE IX.

Spanish subjects, natives of the peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

It needs no comment to show that the United States Government, and hence the Government of the Philippine Islands, succeeded to every right of property which was held by the Government of Spain, and if the land in question, or any part thereof, was a part of the public domain when this treaty was entered into it still remained as such, and it is the duty of the Philippine Government and the city of Manila to resist registration of title thereto.

VI.

In no event have plaintiffs such title to the lands not filled in as admits of registration.

The statute under which this action was instituted (Act No. 496, Pub. Laws, Philippine Commission, Vol. II, p. 89, sec. 19) provides that application for registration of title may be made by the following persons, namely: First, the person or persons claiming singly or collectively to own the legal estate in fee simple; second, the person or persons claiming singly or collectively to have the power of appointing or disposing of the legal estate in fee simple.

It certainly can not be maintained that plaintiffs own a fee simple estate in that part of the premises which lies beneath the water. Under all the authorities heretofore cited, the public has an interest in this property, and may continue to use the same, at least until it is filled in.

Furthermore, the grant of authority to fill the land in is not an estate in these premises at all, and consequently the claim of such right, even if valid, could not, under the statute, be registered.

The decree of the supreme court of the Philippine Islands should, therefore, be reversed in so far as it directs registration of title to the part of the land in question which has been actually filled in, but should be affirmed in so far as it refused registration of title to the other portion of said land.

J. A. FOWLER,
Assistant Attorney General.

MARCH, 1911.

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JOVER Y COSTAS *v.* INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS.

INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS *v.* JOVER Y COSTAS.

APPEALS FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

Nos. 112, 113. Argued April 7, 1911.—Decided May 29, 1911.

Article 46 of the constitution of Spain as existing in 1859, providing that in order to alienate, cede or exchange any part of Spanish territory, the King required the authority of a special law, related to transference of national sovereignty and not to disposal of public land as property.

The laws of the Partida which affirm that the sea and its shore are among the things that are common to all men are not to be so literally construed, as held by the Spanish courts prior to the cession of the Philippine Islands, as prohibiting a grant of tide lands to one desiring to reclaim and improve them.

The Governor General of the Philippine Islands under Spanish rule possessed all the powers of the King except where otherwise provided, and a grant of lands made by him was valid unless in violation of law specially prohibiting him from making it.

Where the local authorities in the Philippine Islands, with full knowl-

edge of the circumstances under which a grant was made, imposed taxes on the property for many, in this case thirty-nine, years, it is persuasive proof that the grant was valid and that the Governor General did not exceed his authority in making it.

A grant of tide lands, although made upon condition of reclamation, is not defeated by failure to reclaim if the granting words import a present and immediate transfer of ownership; and so *held* as to a grant of such lands in the Philippine Islands where the grantee was "granted possession and ownership," and there was no express condition either precedent or subsequent that the land be reclaimed within any definite period.

Where a practical interpretation has been given to a grant of land by the public officials authorized to interpret it, full effect should be given thereto.

The appropriate method to review judgments of the Supreme Court of the Philippine Islands in cases from the Court of Land Registration is by writ of error and not by appeal.

10 Phil. Rep. 522, reversed.

THE facts, which involve the validity of a grant of lands in the Philippine Islands, made prior to the cession to the United States, are stated in the opinion.

Mr. Aldis B. Browne, with whom *Mr. W. A. Kincaid*, *Mr. Alexander Britton*, *Mr. J. H. Blount* and *Mr. Evans Browne* were on the brief, for plaintiffs in error.

Mr. Assistant Attorney General Fowler for the Philippine Islands (Insular Government).

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This was a petition to the Court of Land Registration of the Philippine Islands for the registration of the title to a tract of land in the City of Manila, claimed to have been granted to Don Jose Camps, February 12, 1859, by a decree of the Governor General of those Islands, reading as follows:

"Acting upon the petition in which Don Jose Camps on November 17, 1858, solicited a grant for the land which he fills at his expense on the lowlands situated along the northern wharf (Murallón del Norte) and on the north side thereof, on the right side of the mouth of the Pasig River, with an extension of 200 brazas in length and 100 brazas in width, beginning at a distance of 25 varas (Spanish yards) west of the bridge built on said wharf for the connection of the waters of the river and of the bay from the Beach of Binondo, as appears on the plan hereto attached, to which land, after it has been filled in he intends to move his artistic establishment called 'Camps é Hijos,' and a manufactory of hemp rope; in view of the report made on the 26th of the said month of November by the Alcalde Mayor 1.° of Manila, who, after consultation with the director of public works of the province, is of the opinion that the waste land asked for should be granted to Camps, said land being at present covered by the sea, and being far from the houses situated on the Binondo beach, it is very suitable for purposes of maritime commerce and it is convenient for the purpose of public adornment, that the foundry, iron-working and scientific instrument establishment of Camps é Hijos be located on that place provided that the said Camps shall agree not to erect such buildings with brick and stone or strong materials, for the reason that the same is outside of the military lines; in view of the report made on December 17, 1858, by the Commanding General of Marine, in agreement with the captain of the port regarding the convenience of such concession for the merchant marine and public adornment, but with the precise condition that Camps shall leave a distance of 16½ varas between the outside edge of the wharf and the intended building, which width is the one fixed for wharves; in view also of the report of the sub-inspector of engineers, with the approval of the commander of the

post, proposing that the concession asked for shall not be granted for a building of strong materials, on account of the forts of the place, and that the building to be erected shall consist of only one story, and shall be removed at the expense of its owner, at the discretion of the superior authority of the Islands, when the public interests so require, taking into consideration the circumstances and official and industrial merits of the said Don Jose Camps, and the offer of protection stated in the decree dated November 4, 1858, when refusing the sale, asked for by him, of an irregular piece of land adjoining the new *Cuartel del Carenero*, and in conformity with the above-mentioned reports of the commanding general of marine, the sub-inspector of engineers and the civil chief of the Province of Manila, I hereby decree: Don Jose Camps, *comisario de guerra honorario, oficial mayor jubilado* of the office of the secretary of his superior government, and director of the iron-working and nautical instrument establishment of Camps é Hijos, is granted the possession and ownership of a parcel of land 200 brazas in length and 100 brazas in width, covered at present by the waters of the sea, near the Binondo beach, which land is situated alongside the Murallón del Norte, and requested authority to fill in the same at his expense, is also hereby granted, subject to the following conditions and restrictions:

"First. The land to be filled in shall form a quadrangle 200 brazas long and 100 brazas wide; beginning on the longer side, nearest to the Pasig River, at a point 25 varas from the bridge connecting the waters of the river and of the bay, and running parallel with the wharf toward the lighthouse.

"Second. The buildings to be erected by Camps on this new land so granted shall be located along the said longer side parallel to the breakwater, separated from the edge of the exterior wharf for its whole length, a distance of 16½ varas, which is the width required for wharves.

"Third. The said buildings shall consist of only one story, no materials of the kind prohibited in the military zone shall be employed therein, and shall be roofed with zinc, tarred paper, nipa or other similar materials.

"Fourth. The said buildings shall be removed at the expense of Don Jose Camps or his successors whenever, at the discretion of the superior authority of the Islands, the military service so requires.

"Let the interested party be notified and a certified copy be issued to him.

(Signed) NORZAGARAY."

Opposition to the registration was made by the Insular Government and the City of Manila upon the ground that the grant was unauthorized because the land was a part of the shore of the sea. The Court of Land Registration pronounced the grant valid, sustained the petitioner's asserted ownership of all existing title under it, construed it as made upon condition that the land be reclaimed from the sea, found that the condition had been fulfilled as to part of the land only, and entered a judgment allowing registration of that part and refusing registration of the remainder. Appeals to the Supreme Court of the Philippines resulted in an affirmance of the judgment by an opinion saying:

"Although we are unable to agree upon the grounds upon which our conclusion is based, we are of the opinion that the judgment of the Court of Land Registration should be affirmed, without costs to either party." 10 Phil. Rep. 522.

One member of the court (Johnson, J.) dissented because he was of opinion that the grant was not made upon condition that the land be reclaimed, and another member (Tracy, J.) dissented because he was of opinion that the grant, being of land covered by tidal waters, was one which only the King of Spain could make. Each of the parties

has appealed to this court and has also sued out a writ of error.

In addition to the authenticity of the grant and the petitioner's ownership of all existing title under it, neither of which was questioned, the facts disclosed by the record are these: At the date of the grant the land was marshy waste land, which was covered by the sea at high tide and was uncovered at low tide. Soon after the grant was made the grantee marked its boundaries and began filling in the land. In the course of twenty years, about one-third of the tract was reclaimed and was then improved by erecting warehouses and other buildings thereon. At irregular intervals further work was done toward filling in the remainder, but the area fully reclaimed was not materially enlarged. The grantee and those claiming under him were in the exclusive occupancy and use of the land reclaimed from the time the work was done and at all times asserted title to the entire tract, and intended to complete its reclamation. What was done by them in filling in and improving the land was done openly and at large expense, and neither their work nor their occupancy was at any time disturbed, although both were at all times well known to those in authority at Manila. Nor was the validity or extent of the grant in any wise called in question while the Philippines remained under the dominion of Spain, or until four years thereafter, which was forty-four years after the date of the grant. On the contrary, taxes were imposed upon the land as private property, and at the commencement of the proceeding for registration the land and the improvements were assessed to the petitioner at a valuation of $255,578.00.

It is the contention of the Insular Government and the City of Manila that the grant was unauthorized and void, first, because the King of Spain was without power to make it, and so could not devolve that power upon the Governor General, and second, because, even if the King possessed

that power, he had not devolved it upon the Governor General.

The first branch of the contention is rested, primarily, upon Article 46 of the then constitution of Spain, which declared that "to alienate, cede or exchange any part of Spanish territory" the King required "the authority of a special law," and, secondarily, upon laws 3 and 4, title 28, Partida 3, which affirm that the sea and its shore are among the things which belong in common to all men. Of the article in the Spanish constitution it is enough to say that it obviously did not relate to the disposal of public land as property, but only to the transference of national sovereignty; and of the laws cited from Partida 3 it is enough to say that the same meaning and influence must be attributed to them now that were attributed to them by the Supreme Judicial Tribunal of Spain in its decision of May 1, 1863 (Book 8, p. 288), wherein, in sustaining a royal order of January 15, 1853, making a grant of tide land to one who desired to reclaim and improve it, it was said:

"While it is true that Partida 3, title 28, laws 3 and 4, in determining what things are the common right of men and how they may use them, enumerates as such, among other things, the sea and its shore, this is not to be taken in an absolutely literal manner, since a number of limitations to the general proposition have been recognized for the common benefit of the community as being conducive to the general welfare of the State, which latter may grant shore land for improvement where the same has not already lawfully come under private ownership."

As then the King possessed the power to make the grant, we come to the second branch of the contention, namely, that he had not devolved that power upon the Governor General. Many royal orders bearing upon the subject have been called to our attention. The one of first importance is embodied in law 11, title 15, book 2, Laws of the Indies, and reads as follows:

"In the city of Manila, Island of Luzon, capital of the Philippines, another audiencia and royal chancellory is established, with a president, *who shall be the Governor and Captain General;* four associate judges (oidores), who shall also be criminal judges (alcaldes el crimen); one fiscal; one high constable; one vice grand chancellor (teniente de gran chanciller), and the other necessary ministers and officials; and the said audiencia shall have as its district the lands of the said island of Luzon, already discovered and which may be discovered. And *we order that the governor and captain general* of the said Islands and provinces, and president of the royal audiencia of the same, *hold exclusively the superior government of the whole district of said audiencia in peace and in war, and make in our royal name these sentences and grant those favors, which, in conformity with the laws of this 'Recopilacion' and of these Kingdoms of Castile, and with the instructions and powers received from us, he may and ought to make, and in all* those administrative cases and *matters of importance,* the said president-governor shall try the same together with the oidores of said audiencia in order that they may give him their opinion in consultation, and after hearing the same, *he shall provide for what is best for the service of God and our own interests and the peace and tranquility of the said province and community.*"

Without doubt it was intended by this order to invest the Governor General with large powers and a wide range of discretion, fully commensurate with the situation in which they were to be exercised. The language used was general and comprehensive. Possibly, according to Spanish standards, its meaning was much the same as if it had been said directly that the Governor General of the Philippines was empowered thereby to do in that distant province whatever the King could do, if he were present, save where it was otherwise specially provided. The other orders bearing upon the subject are not inconsistent with

that view of it. But whatever the original meaning of the order may have been, the one suggested was adopted and adhered to by the successive governors general, and their action in that regard was acquiesced in, and therefore ratified, by the King. Thus, in the course of approved usage, the order came to be, in effect, the same as the one relating to the viceroys of Peru and New Spain, which is embodied in law 2, title 3, book 3, Laws of the Indies, and declares, "they shall do what they may think and consider to be suitable, and provide for everything we might do, and provide for, of whatever quality and condition it may be, in the provinces under their charge, as if the same were governed by ourselves, in all cases where no special prohibition exists."

Recognition of this is found in Coronado's Legislacion Ultramarina, vol. 2, pp. 175, 176, where, after stating that the powers of the governors general of the Philippines and other provinces beyond the seas include the powers named "under the titles of viceroys and presidents in the Laws of the Indies," the author proceeds:

"This consolidation of such vastly important powers, although it has some inconveniences, has been deemed necessary in order to surround with prestige and sustain a superior authority, at so great a distance from the sovereign, in the capitals of those large provinces, sufficiently to provide speedily and easily all requirements for their preservation and tranquility, for which the captains-general are responsible, and to provide also a good policy and administration, the security of the persons and property of the inhabitants, the publication and due execution of the laws and orders emanating from the high government, and, generally, every wise and prudent measure demanded by the public order, the tranquility and greater prosperity of the countries intrusted to them."

See also San Pedro's Legislacion Ultramarina, vol. 1, p. 65.

And so it is that historical reviews of the Philippines, while under Spanish dominion, uniformly speak of the governors general as possessing almost absolute authority, as is illustrated by the following:

In the history by Juan Jose Delgado, chapter 17, pp. 212 et seq., which was written in 1754, it is said:

"In no kingdom or province of the Spanish crown do the viceroys or governors enjoy greater privileges, superiority and grandeur than in Filipinas. That is advisable because of the long distance from the court, and their proximity to so many kingdoms and nations, some of them civilized but others barbaric. . . . The governors of these islands are almost absolute. . . . They exercise supreme authority by reason of their charge, for receiving and sending embassies to the neighboring kings and tyrants, for sending them gifts and presents in the name of their king, and for accepting those which those kings and tyrants send them. They can make and preserve peace, declare and make war, and take vengeance on all who insult us, without awaiting any resolution from court for it. . . . Besides the above, the governors of these islands have absolute authority privately to provide and attend to all that pertains to the royal estate."

In Montero y Vidal's work, p. 162, published in 1866, this appears:

"A governor and captain-general exercises the supreme authority in Filipinas. In his charge is the direction of all civil and military matters, and even the direction of ecclesiastical matters, in so far as they touch the royal patronage. . . . The authority, then, of the governor-general, is complete."

And in the Philippine census of 1903, vol. 1, p. 364, Trinidad H. Pardo de Tavera of the Philippine Commission states that "the powers given to a governor of the Philippine Islands was practically unlimited."

Considering then that the Governor General, within the

territory committed to his charge, possessed all the powers of his master, the King, save where it was otherwise specially provided, the question whether the grant was within or in excess of the authority of the Governor General is to be determined, not by inquiring whether there was a law or order specially confiding to him the disposal of tide land, but by inquiring whether there was a law or order specially prohibiting such a disposal; that is to say, the existence of power, being usual, will be presumed, and the absence of it, being exceptional, must be shown. *United States* v. *Arredondo*, 6 Pet. 691, 728; *United States* v. *Clarke*, 8 Pet. 436, 451.

The laws and orders brought to our attention do not contain anything which, rightly considered, amounted to a prohibition of this grant. Laws 3 and 4, title 28, Partida 3, which affirm that the sea and its shore are among the things which are common to all men, are the nearest in point, but they, as interpreted by the Supreme Judicial Tribunal of Spain, were not to be taken literally and did not forbid the granting of tide land for purposes of reclamation and improvement.

What has been said sufficiently shows that the grant was made upon adequate authority, but there are other considerations which enforce this conclusion. The Spanish authorities at Manila, although familiar with what was done and claimed under the grant, and although in a position to know and enforce the law applicable to it, did not call it in question at any time during the thirty-nine years of Spanish dominion after it was made, but, on the contrary, treated it as valid by imposing taxes upon the land as private property. This is persuasive proof that in making the grant the Governor General did not exceed his authority. Besides, it must be presumed, there being no showing to the contrary, that he reported the grant to his superiors at Madrid, as was required by the royal order of January 4, 1856 (San Pedro's Legislacion Ultramarina,

vol. 1, p. 75), and therefore the fact that the grant went unchallenged, as it did, dispels all doubt of his authority.

Next to be considered is the contention, advanced by the Insular Government and the city of Manila, that the grant was made upon condition that the land be reclaimed from the sea and that "all title thereunder is defeated," because part of the land has not as yet been reclaimed. The granting words, "is granted the possession and ownership," are plain and import a present and immediate transfer of the ownership of all the land. There are no words of exception, nor any which purport to postpone the transfer until a later time. And while it clearly is contemplated that the land is to be reclaimed, there is no language which fixes a time for beginning or completing that work. Nor is the contemplated reclamation treated as the sole inducement to the grant, for it recites that it is made in consideration, *inter alia*, of "the official and industrial merits of the said Don Jose Camps and the offer of protection stated" in a prior decree. Thus, upon a survey of the grant, it is manifest that there was no express condition, either precedent or subsequent, that the land be reclaimed within any period of time. Of course, it was for the Governor General to judge of the restrictions to be imposed. He could have designated a time within which the reclamation should be effected, and could have made compliance with that requirement a condition, either precedent or subsequent. Or, if to him it seemed wise, he could have left the grantee free to effect the reclamation at such time as to the latter might seem practicable and advantageous, considering the cost of the undertaking, the means at hand for completing it, and the benefits to be derived from it. But the Governor General did not expressly adopt either of these alternatives. On the contrary, his will and purpose in that regard were expressed with such uncertainty that they could be determined only by resorting to interpretation. But that uncertainty was

effectually eliminated before the termination of Spanish dominion in the Philippines. During the many intervening years the parties concerned, that is to say, the representatives of Spain and those claiming under the grant, pursued a course of action, heretofore described, which admits of no other conclusion than they concurred in treating the grant as embodying the latter of the two alternatives suggested. In that way a practical interpretation was given to the grant by those who were authorized to interpret it, and full effect must be given to that interpretation now.

It follows that the contention last stated must be rejected and that the petitioner's contention that registration should have been allowed of the entire tract, including the part not as yet reclaimed, must be sustained.

The parties, being in doubt whether they should invoke our appellate jurisdiction in cases such as this by writ of error or by appeal, resorted to both methods. Since then it has been settled that the appropriate method is by writ of error. *Cariño* v. *Insular Government*, 212 U. S. 449, 456; *Tiglao* v. *Insular Government*, 215 U. S. 410, 414.

The appeals are dismissed and the judgment of the Supreme Court of the Philippines is reversed and the cause is remanded to that court with a direction to reverse the judgment of the Court of Land Registration and remand that cause to the court with a direction to allow registration of the entire tract as prayed in the petition.